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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1953

No. 398

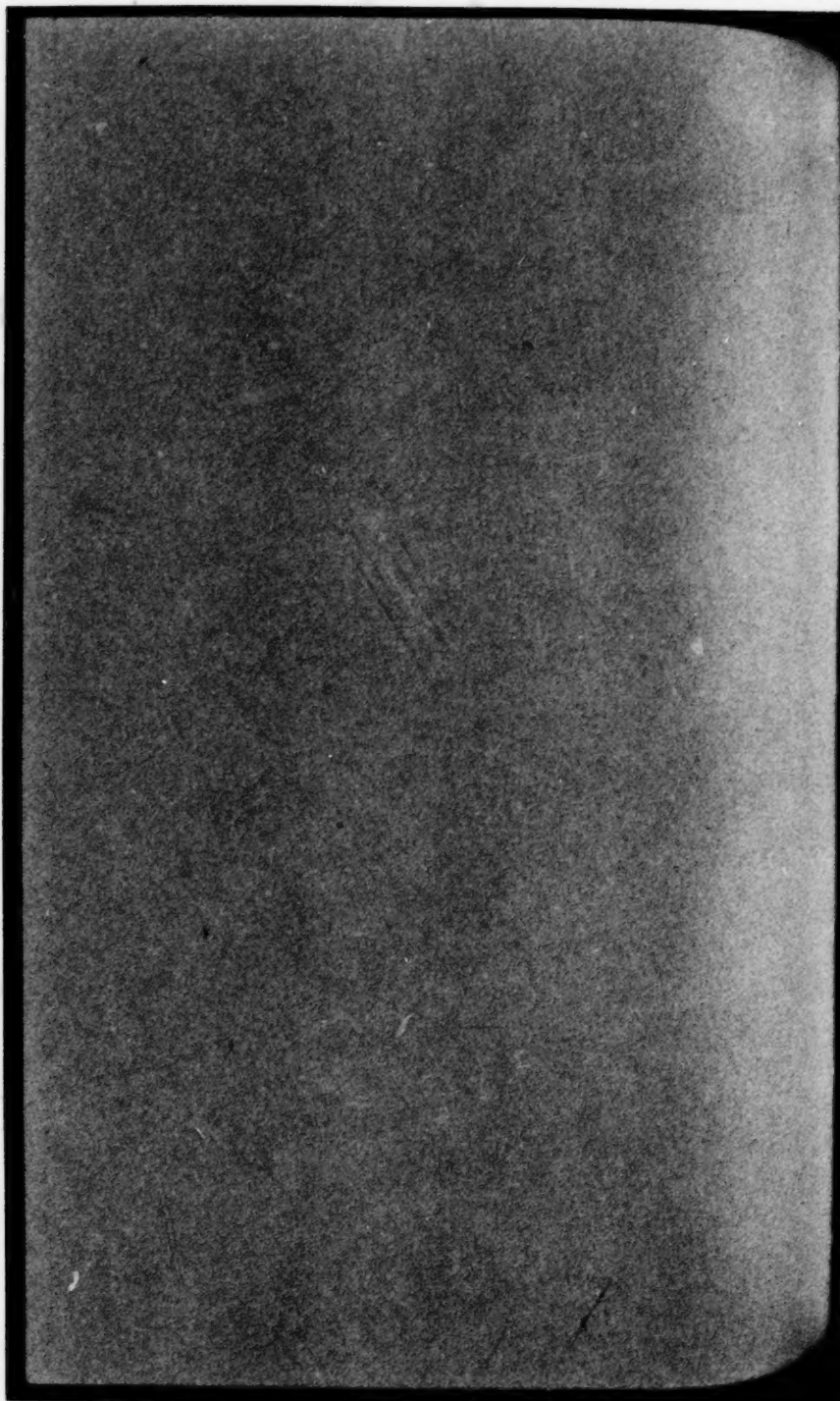
CAPITAL SERVICE, INC., A CALIFORNIA CORPORATION, DOING BUSINESS UNDER THE FICTITIOUS FIRM NAME AND STYLE OF DANISH MAID BAKERY, AND G. BRASHEARS, INDIVIDUALLY AND AS PRESIDENT OF SAID CORPORATION, PETITIONERS.

NATIONAL LABOR RELATIONS BOARD

**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

RECEIVED THE SECRETARY OF THE SUPREME COURT, 1953

RECEIVED THE CLERK OF THE SUPREME COURT, JANUARY 21, 1954



BLEED THROUGH

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 398

CAPITAL SERVICE, INC., A CALIFORNIA CORPORATION, DOING BUSINESS UNDER THE FICTITIOUS FIRM NAME AND STYLE OF DANISH MAID BAKERY, AND G. BRASHEARS, INDIVIDUALLY AND AS PRESIDENT OF SAID CORPORATION, PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 21, 1953.

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**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL
DIVISION**

Civil Action No. —

NATIONAL LABOR RELATIONS BOARD, Plaintiff,

v.

CAPITAL SERVICE, INC., a California Corporation, Doing
Business under the Fictitious Firm Name and Style of
Danish Maid Bakery, and G. Brasbears, Individually and
as President of said Corporation, Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF—Filed May 14, 1952

I

This action arises under the National Labor Relations Act, as amended (29 U. S. C. Supp. IV, Section 141 *et seq.*), hereinafter referred to as the Act, an act of Congress regulating interstate commerce. The jurisdiction of this Court is invoked under Section 1337 of the Judicial Code (28 U. S. C., Supp. IV, Section 1337) which confers jurisdiction on the United States District Courts of any civil action or proceeding arising under any Act of Congress regulating commerce, and under Section 1651 of the Judicial Code (28 U. S. C., Supp. IV, Section 1651) which authorizes the United States District Courts to issue all writs necessary or appropriate in aid of their respective jurisdictions.

[fol. 3]

II

Plaintiff, herein called the Board, is an agency of the United States created pursuant to the Act. The Act vests the Board with exclusive primary jurisdiction to determine whether certain concerted activities by labor organizations, which affect commerce as defined in Sections 2 (6) and (7) of the Act, constitute unfair labor practices within the meaning of Section 8 of the Act, or conduct permitted and guaranteed by Section 7 of the Act. The Act further vests

the Board with exclusive primary jurisdiction to redress such of these activities as constitute unfair labor practices.

In exercising the above-described exclusive jurisdiction, Section 10 (j) of the Act empowers the Board, and Section 10 (l) directs it, to enlist the aid of the federal district courts. Except to the limited extent provided in Sections 10 (j) and (l), no court has power to grant injunctive relief against matters within the Board's exclusive jurisdiction. Under Sections 10 (e) and (f), the Board's exercise of its exclusive jurisdiction is subject to judicial review by the federal courts of appeals, but only when the Board action has culminated in a "final order" within the meaning of these Sections.

III

Defendant Capital Service, Inc., is a California corporation engaged in the manufacture and distribution of bakery products in and around Los Angeles, California. During 1951, it purchased raw materials valued in excess of \$500,000, approximately \$30,000 of which was received directly from points outside the State of California, and approximately \$175,000 of which was received indirectly from outside said State.

The business of Defendant Capital Service, Inc., affects commerce within the meaning of Sections 2 (6) and (7) of the Act. In April, 1949, the Regional Director of the Board for the Twenty-First Region so found when he asserted jurisdiction over Capital Service by conducting, pursuant to Section 9 (c) of the Act, an election among the employees of the Company to determine whether they desired to be represented by Bakery and Confectionery Workers, International Union of America, Local Union No. 37, A. F. L. [fol. 4] This proceeding is captioned on the Board's records as Case No. 21-RC-790.

Defendant G. Brashears is President of Capital Service Inc.

IV

Thriftmart and Boys Valley Market No. 4 are retail food markets located in Los Angeles, California, which sell the

bakery products of Capital Service, Inc. In 1951, Thriftmart received merchandise, which originated from sources outside the State of California, valued at approximately \$300,000. In 1951, Boys Valley Market No. 4 received, direct from outside the State of California, merchandise valued at approximately \$800,000, and it received, indirectly from outside of California, additional merchandise valued at approximately \$1,000,000.

Valley Stores No. 1 and 2 are retail food stores located in North Hollywood, California, which also sell the bakery products of Capital Service, Inc. In 1951, Valley Stores No. 1 and No. 2 received merchandise, which originated from sources outside the State of California, valued at approximately \$250,000.

As will appear hereafter, certain labor organizations, in furtherance of their controversy with Capital Service, Inc., maintained a picket line and engaged in other concerted activities in front of these retail stores. Such concerted activities affect commerce within the meaning of Sections 2 (6) and (7) of the Act.

V

On February 21, 1952, Defendants, pursuant to Section 10 (b) of the Act, filed a charge with the Regional Director of the Board for the Twenty-First Region. This charge, a copy of which is annexed hereto as Exhibit 1, alleged that certain labor organizations and their agents (including Bakery Drivers Local Union No. 276, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL) were "engaging in unfair labor practices within the meaning of Section 8 (b), subsection (4) (A) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices [fol. 5] affecting commerce within the meaning of the Act" (Exhibit 1).

More specifically, the charge alleged that the specified labor organizations had established picket lines at various retail stores selling Capital Service's bakery products (including those enumerated in Paragraph IV above), the

pickets carrying placards which read as follows (Exhibit 1):

To the Public
Danish Maid
Bakery Products
Sold Here Are Made
And Delivered By
A Bakery That Is
Non-Union
And On The
We Do Not Patronize List
of the
Los Angeles Central Labor Council
Los Angeles Food Council
Joint Council of Teamsters' Union 42
Bakery Drivers' Local 276
Bakers' Local Number 37

In addition, the charge alleged that the pickets induced employees of other suppliers of these retail stores to cease making deliveries of goods to said stores. An object of all of this activity, the charge concluded, was to force the retail stores to cease doing business with Defendant Capital Service.

VI

On the same day that they filed the above-described unfair labor practice charge with the Board, Defendants filed an action for damages in this Court, pursuant to Section 303 of the Labor-Management Relations Act, 1947 (29 U. S. C., Supp. IV, Section 187). This action, *Capital Service Inc. v. Bakery Drivers et al.*, Case No. 13853 PH, is brought against the same labor organizations specified in [fol. 6] the charge filed with the Board, and seeks redress by way of damages for the identical conduct which forms the basis for said charge. As subsequently amended, the complaint in Case No. 13853 PH asserts that Capital Service, Inc., "in the course and conduct of its business, causes and continuously has caused large quantities and valuable amounts of supplies, materials and equipment used by it in the conduct of its business, to be transported from and

through states of the United States other than the State of California to its plant located in Los Angeles, California."

VII

At about the same time that they took the steps described in Paragraphs V and VI above, Defendants also filed a suit against the same labor organizations in the Superior Court of the State of California in and for the County of Los Angeles. A copy of the Complaint in this action, Case No. 595892, is annexed hereto as Exhibit 2. The Complaint, *inter alia*, seeks an injunction against the identical activity covered by the unfair labor practice charge filed with the Board (Paragraph V), and by the damage action filed in this Court (Paragraph VI).

VIII

The Regional Director of the Board for the Twenty-First Region, after investigation of the unfair labor practice charge filed by Defendants, concluded that the concerted activities engaged in by the specified labor organizations at the stores of Capital Service's customers required restraint to only a limited degree. More specifically, he concluded that there was reasonable cause to believe that only one of the labor organizations specified in the charge (Bakery Drivers Local Union No. 276, International Brotherhood of Teamsters, *etc.*) had engaged in any conduct which could be deemed an unfair labor practice within the meaning of the Act; that the picketing and other activities of this labor organization at the retail stores, insofar as it was limited to acquainting ultimate consumers with Defendants' non-union working conditions, was not an unfair labor practice; and that such activity constituted an unfair labor practice within the meaning of Section 8 (b) [fol. 7] (4) (A) of the Act only insofar as it was *directed at employees* of customers of Capital Service (including the retail stores specified in Paragraph IV above), and their suppliers.

As required by Section 10(1) of the Act, the Regional Director has accordingly petitioned this Court for a preliminary injunction against such violations of Section 8(b) (4)(A), pending final determination by the Board. This

petition, Civil No. —, has been filed simultaneously with the institution of the instant suit.

Pursuant to Sections 10(b) and 3(d) of the Act, the Regional Director has also issued an unfair labor practice complaint against Bakery Drivers Local Union No. 276, *etc.*, charging it with having violated Section 8(b)(4)(A) in the respects already indicated. A copy of this complaint is annexed hereto as Exhibit 3.

IX

In the meantime, the Superior Court (in the action described in Paragraph VII) entered a preliminary injunction, a copy of which is annexed hereto as Exhibit 4. This injunction enjoins not only Bakery Drivers Local No. 276, *etc.*, but all of the labor organizations specified in the Superior Court Complaint (Exhibit 2). It enjoins said labor organizations from:

“1. Inducing or seeking or attempting to induce any person to refrain from purchasing plaintiff’s [Capital Service’s] merchandise by picketing plaintiff’s customers or prospective customers.

2. Stationing or maintaining any pickets at or about the place of business of any of plaintiff’s customers or prospective customers or threatening to do same.”

The Superior Court decree thus enjoins not only conduct which the Regional Director of the Board (Paragraph VIII above) has found to be unlawful, but also conduct which he has found did not require restraint.

The Superior Court, in its memorandum opinion (annexed hereto as Exhibit 5) which accompanied such decree, stated the issue to be “whether a secondary picket line is contrary to the public policy” of California. Finding no statutory [fol. 8] or prior judicial authority in point, the Superior Court noted that courts have power to declare public policy, and proceeded to conclude that the secondary picketing involved in the case was contrary to the public policy of California.

Before the Superior Court at the time that it issued said injunction was an affidavit by Defendant Brashears, which pointed out that, in a prior representation proceeding (de-

scribed in Paragraph III above), the Board had previously asserted jurisdiction over Capital Service's operations. However, the only reference in the Superior Court's memorandum opinion to the Act is the statement that the "Taft-Hartley Law is a recognition of the rights of the public in labor disputes" (Exhibit 5).

After the Superior Court issued said preliminary injunction, the labor organizations affected thereby moved to vacate the restraint on the grounds, *inter alia*, "that the Court was without jurisdiction to issue said Preliminary Injunction; that the National Labor Relations Board has assumed jurisdiction of all of the matters at issue herein and has proposed a settlement of all said issues" (Exhibit 6, annexed hereto). The Superior Court, without hearing argument, summarily denied this motion to vacate.

X

Insofar as the Superior Court injunction (specified in Paragraph IX) prohibits the unions, at the retail stores which sell Defendants' products, from engaging in concerted activities directed at employees making deliveries there, said injunction undertakes to remedy the precise conduct which is the subject of the 10(1) action mentioned in Paragraph VIII. In this respect, the Superior Court has provided an injunction remedy, at the suit of a private party, for conduct which the Board's Regional Director has found reasonable cause to believe constitutes an unfair labor practice within the meaning of Section 8(b)(4)(A) of the Act, and as required by Section 10(1) of the Act, has accordingly petitioned this Court for a temporary injunction, pending final adjudication by the Board.

The Act vests the Board, and the federal district courts (to the extent specified in Section 10(1) of the Act), with exclusive primary jurisdiction to issue injunctions against [fol. 9] conduct which falls within the scope of Section 8(b)(4)(A). The Superior Court was thus without power to enjoin such conduct, and its action in so doing invades the exclusive jurisdiction of the Board and of this Court, and is contrary to the provisions of the Act and Article I, Section 8 of the Constitution of the United States.

XI

Insofar as the Superior Court injunction (specified in Paragraph IX) prohibits the unions, at the retail stores which sell Defendants' products, from engaging in peaceful picketing and other concerted activity which do not constitute unfair labor practices under the Act, said injunction likewise regulates conduct which is in the field covered by the Act. By the Act, Congress undertook to encompass all secondary picketing and boycott activities engaged in by labor organizations in industries affecting commerce. Some forms of such activity Congress decided to prohibit as unfair labor practices (those specified in Section 8(b)(4) of the Act); other forms it decided affirmatively to protect, encompassing them within the rights guaranteed by Section 7 of the Act; and the remaining forms, Congress decided to leave free of any governmental intervention, neither prohibiting nor affirmatively protecting them.

The Act preempts the entire field of peaceful secondary picketing and boycott activity affecting commerce, permitting no state regulation therein. By undertaking to remedy activities in this field, the Superior Court has invaded an area which Congress has closed to state regulation, and has impaired the important Congressional objective of a uniform national labor policy in industries affecting commerce, administered exclusively by federal authorities.

Moreover, the Act vests the Board, and the federal district courts (to the extent that the Board has invoked their aid, pursuant to Sections 10(1) and (j) of the Act), with exclusive primary jurisdiction to apply the above-described Congressional policy respecting picketing and boycott activities engaged in by labor organizations in industries [fol. 10] affecting commerce. By enjoining secondary picketing in the field covered by the Act, the Superior Court has invaded the exclusive jurisdiction of the Board and the federal district courts, even though the conduct enjoined may not constitute an unfair labor practice under the Act.

Finally, to the extent that the secondary picketing enjoined by the Superior Court is affirmatively protected under Section 7 of the Act, its decree conflicts with and negates rights specifically guaranteed by the Act.

For all of these reasons, the Superior Court decree is

contrary to the provisions of the Act, and of Article I, Section 8 of the Constitution of the United States.

XII

Unless Defendants are restrained and enjoined, as hereafter prayed, the Superior Court injunction referred to in Paragraph IX above will continue to stand as a barrier to the exercise by labor organizations of the rights guaranteed them in the Act. Moreover, upon information and belief, unless Defendants are so restrained and enjoined, they will continue to avail themselves of the benefits of said Superior Court injunction and seek enforcement thereof, which would further irreparably invade the field which Congress has preempted and closed to state regulation, and impair the Congressional objective of a uniform national labor policy in industries affecting commerce. The continued effectiveness of the Superior Court injunction would also further irreparably impair and invade the Board's exclusive primary jurisdiction under the Act to determine whether concerted activities engaged in by labor organizations, which affect commerce, constitute unfair labor practices and thus require restraint, and the exclusive role which Sections 10(j) and (l) of the Act confer upon the federal district courts in respect to such matters. The Board has no adequate remedy at law to protect and preserve the rights guaranteed by the Act, the Congressional policies expressed therein, and the exclusive jurisdictions conferred thereby, against the invasions made, and threatened to be continued, [fol. 11] by Defendants in obtaining and seeking to utilize the sanctions of the Superior Court injunction referred to in Paragraph IX.

Wherefore, the Board prays:

1. That the Court issue an order directing Defendants to appear and show cause why a preliminary injunction should not issue against them, their agents, servants, employees, attorneys, and all persons in active concert or participation with them:

- (a) Enjoining and restraining them from in any manner seeking to enforce or avail themselves of the benefits of the preliminary injunction issued on April 7, 1952, by the

Superior Court of California, Los Angeles County, in Case No. 595892; and from taking any further steps in said case, instituting any further actions in said Superior Court, or instituting actions in any other state court, the effect of which would be to secure injunctive relief against the labor organization activities specified in Paragraphs V, VI, and VII of the Complaint herein.

(b) Requiring them to withdraw Case No. 595892 filed in said Superior Court, at least insofar as it prays for injunctive relief, and to request said Superior Court to vacate the preliminary injunction issued on April 7, 1952.

2. That, upon return of said order, the Court issue a preliminary injunction enjoining and restraining Defendants, their agents, servants, employees, attorneys, and all other persons in active concert or participation with them, as set forth in prayer 1, above.

3. That the Court issue a permanent injunction enjoining and restraining Defendants, their agents, servants, employees, attorneys, and all other persons in active concert or participation with them, as set forth in prayer 1, above. [fol. 12] 4. That the Court grant such other and further relief as may be just and proper.

Dated at Los Angeles, California this 14th day of May, 1952.

NATIONAL LABOR RELATIONS BOARD,

By NORTON J. COME,

Attorney,

JAMES V. CONSTANTINE,

Attorney,

CHARLES K. HACKLER,

Chief Law Officer, 21st Region.

[fol. 13]

EXHIBIT TO COMPLAINT

Copy

Form NLRB-508 (1-51)

Form Approved Budget Bureau No. 64-R003.3

United States of America
National Labor Relations Board

Charge Against Labor Organization or Its Agents

Case No. 21-CC-130

Date Filed: 2/21/52

Compliance Status
Checked by:1. Labor Organization or Its Agents Against Which Charge
Is Brought

Name:

Bakery Drivers Local Union No. 276 (Teamsters), Charles A. Bolton, Henry J. Becker, and C. Leonard, Agents thereof, 846 South Union Ave., Los Angeles, California.

Bakery and Confectionery Workers International Union of America, Local Union No. 37, Ray Gulick and T. O. Turner, agents thereof, 1040 South Grand Ave., Los Angeles, California.

Joint Council of Teamsters of Southern California, Number 42, John M. Annand, Agent thereof, 846 South Union Ave., Los Angeles, California.

Los Angeles Food Council, 1659 W. 11th Street, Los Angeles, California.

Los Angeles Central Labor Council, Thomas Ranford, Mae Stoneman and W. J. Bassett, Agents thereof, 536 Maple Ave., Los Angeles, California.

Wholesale Delivery Drivers and Salesmen Union, Local 848, 846 So. Union Ave., Los Angeles, California.

Sales Drivers and Dairy Employees Union, Local No. 166, 846 So. Union Ave., Los Angeles, California.

Sales Drivers and Helpers Union, Local No. 572, 846 So. Union Ave., Los Angeles, California.

[fol. 14] Sales Drivers, Food Processors and Helpers Union, Local 592, 846 So. Union Ave., Los Angeles, California.

Milk Drivers Local Union No. 441, 846 So. Union Ave., Los Angeles, California.

Grocery Warehousemen Union Local No. 595, 846 So. Union Ave., Los Angeles, California.

Local 598, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 846 So. Union Ave., Los Angeles, California.

Provision Drivers Union, Local No. 626, 846 So. Union Ave., Los Angeles, California.

Produce Drivers Union, Local No. 630, 846 So. Union Ave., Los Angeles, California.

Drivers, Helpers and Cold Storage Warehousemen Union, Local No. 942, 846 So. Union Ave., Los Angeles, California.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 846 South Union Ave., Los Angeles, California.

Address: (Listed under "Names" above)

The above-named organizations and their agents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) Subsection 4(A) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

1.

Plaintiff is now and at all times hereinafter mentioned was engaged in the business of baking and selling a comprehensive line of bakery goods and distributes the same to purchasers within the jurisdiction of the District Court of the United States in and for the Southern District of California, Central Division. Plaintiff uses as a trade-mark for its merchandise the name "Danish Maid". One of the

methods in which plaintiff merchandises its bakery products is to sell and deliver its merchandise, packaged, to food markets, for self-service sale by said food markets to the general public. Said food market customers of plaintiff purchase at wholesale for sale at retail, meat products, dairy products and grocery products from many companies. Said products are too numerous to mention. Said food products are delivered to said food markets in trucks and other motor vehicles [fol. 15] operated by members of the defendant teamster labor organizations. Said members of defendant labor organizations are employees of the following suppliers of food commodities to the food markets: Weber Baking Company, Swift and Company, Cudahy Packing Co., Langendorf Bakery, Wonder Baking Company, Barbara Ann Bakery, Oroweat, National Biscuit Company, Knudsen Creamery Co., Challenge Creamery, Log Cabin Bread, Golden State Milk Company, Iris Food Company, John W. Sander Company, Jersey Maid Dairy Company, and Pellissier Farms Dairy.

2.

From February 4, 1952, until the present time, defendants have unlawfully engaged in, and induced and encouraged the employees of the hereinafter named employers, to engage in a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities sold and distributed by their own employers, or to perform any services for their employers, as follows: Weber Baking Company, Swift and Company, Cudahy Packing Co., Langendorf Bakery, Wonder Baking Company, Barbara Ann Bakery, Oroweat, National Biscuit Company, Knudsen Creamery Co., Challenge Creamery, Log Cabin Bread, Golden State Milk Company, Iris Food Company, John W. Sander Company, Jersey Maid Dairy Company, and Pellissier Farms Dairy.

3.

An object of defendants in their activities described above has been, and is, to force and require the retail market customers of plaintiff, hereinafter set forth, to cease using, selling, handling, transporting, or otherwise dealing in the

products of plaintiff, or to cease doing business with plaintiff, to-wit:

- Best Buy Market, 1526 East Florence, County of Los Angeles, California;
- Carl's Market, 2601 Pasadena Avenue, Los Angeles, California;
- Carl's Market, 508 North Doheny Drive, Los Angeles County, California;
- Carl's Market, 3488 West Eighth Street, Los Angeles, California;
- Valley Market, 12903 Moorpark, North Hollywood, California;
- Arrow Market, 8315 Santa Monica Boulevard, Los Angeles, California;
- Lamarr's, 706 West Las Tunas, San Gabriel, California;
- Fitzsimmon's Market, 2430 Glendale Boulevard, Los Angeles, California;
- Robert's Market, 420 North Broadway, Santa Monica, California;
- The Boys' Market, Inc., 5531 Monte Vista, Highland Park, California;
- The Boys' Market, Inc., 120 East Valley Blvd., San Gabriel, California;
- The Boys' Market, Inc., 3670 Crenshaw Blvd., Los Angeles, California.

[fol. 16]

4.

That defendant associations did patrol, picket and placard the delivery entrances of the following food markets; that the locations of said food markets are set forth following the names of said markets; that the time at which said patrolling, picketing and placarding began, is set forth following the name and address of said market:

- Carl's Market, 3488 West Eighth Street, Los Angeles, California, February 7, 1952;
- Valley Market, 12903 Moorpark, North Hollywood, California, February 11, 1952;
- Fitzsimmon's Market, 2430 Glendale Boulevard, Los Angeles, California, February 12, 1952;
- Robert's Market, 420 North Broadway, Santa Monica, California, February 12, 1952;

Lamarr's, 706 West Las Tunas, San Gabriel, California,
 February 18, 1952;
 The Boys' Market, Inc., 5531 Monte Vista, Highland Park,
 California, February 19, 1952;
 The Boys' Market, Inc., 120 East Valley Blvd., San Gabriel,
 California, February 19, 1952;
 The Boys' Market, Inc., 3670 Crenshaw Blvd., Los Angeles,
 California, February 19, 1952.

5

Said pickets carried a placard or sign that contained the following language :

"To the Public
 Danish Maid
 Bakery Products
 sold here are made
 and delivered by
 a Bakery that is
 Non - Union
 and on the
 We Do Not Patronize List
 of the
 Los Angeles Central Labor Council
 Los Angeles Food Council
 Joint Council of Teamsters' Union 42
 Bakery Drivers' Local 276
 Bakers' Local Number 37"

6

That as a direct and proximate result of the picketing and coercive statements of defendants, and of the communication of the fact of said picketing and said unfair listing to the labor organizations affiliated with the defendant Joint Council of Teamsters Local Number 42, and the defendant Los Angeles Central Labor Council, and the defendant Los Angeles Food Council, all of which activities have been since February 4, 1952, and now are continuously carried on, employees of the employers set forth in paragraph IV hereof refused, in concert, to work for their employers, and most of the retail market customers of plaintiff set forth in paragraph 4 hereof ceased doing business with plaintiff as

a direct result thereof and plaintiff has lost business which it was doing with said markets in the amount of approximately [fol. 17] mately \$4,500.00 per week. Because of the activities of defendants aforesaid, plaintiff has been unable to sell its merchandise to said markets. As a direct and proximate result of the unlawful activities of the defendants, as hereinabove described, plaintiff has been damaged in the amount of \$50,000.00 to the date of filing this complaint, by reason of the loss of business aforesaid and by reason of the fear on the part of other customers of plaintiff that defendants will engage in a similar secondary boycott against said customers if said persons do business with plaintiff.

3. Name of Employer: Capital Service, Inc.
4. Location of Plant Involved: 2409 Southwest Drive, Los Angeles, California
5. Nature of Employer's Business: Bakery
6. No. of Workers Employed: 80
7. Full Name of Party Filing Charge: G. Brashears
8. Address of Party Filing Charge: 2409 Southwest Drive, Los Angeles, California, Telephone: PL 3-1661.

9. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By (S.) G. Brashears, President.

Date: Feb. 19, 1952.

(Wilfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 1001).

[fol. 18]

EXHIBIT 2 TO COMPLAINT

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF LOS ANGELES

No. 595892

CAPITAL SERVICE, INC., a California Corporation, Doing
Business Under the Fictitious Firm Name and Style of
Danish Maid Bakery, Plaintiff,

VS.

BAKERY DRIVERS LOCAL UNION NUMBER 276; CHARLES A. BOLTON, Individually and as a Member and officer thereof; Henry J. Becker, Individually and as a Member and Officer thereof; Bakery and Confectionery Workers International Union of America, Local Union No. 37, an Unincorporated Association; Ray Gulick, Individually and as a Member and Officer thereof; T. O. Turner, Individually and as a Member and Officer thereof; Joint Council of Teamsters of Southern California Number 42, an Unincorporated Association; Einar Mohn, Individually and as President thereof; Los Angeles Food Council, an Unincorporated Association; Los Angeles Central Labor Council, an Unincorporated Association; Thomas Ranford, Individually and as a Member and Officer thereof; Mac Stoneman, Individually and as a Member and Officer thereof; W. J. Bassett, Individually and as a Member and Officer thereof; Carl's Ranch Markets, Inc., a Corporation, Doing Business Under the Fictitious Firm Name and Style of Carl's Market and Under the Fictitious Firm Name and Style of Best Buy Market; Harry Caplan, Doing Business Under the Fictitious Firm Name and Style of Carl's Market; Harry Caplan, Inc., a Corporation, Doing Business Under the Fictitious Firm Name [fol. 19] and Style of Carl's Market; Valley Stores, Inc.,

a Corporation, Doing Business Under the Fictitious Firm Name and Style of Valley Market; Doe One Association to Doe Fifty Association (Inclusive of All Intervening Numbers as though Each Association Was Severally and Separately Designated), each an Unincorporated Association; Doe One Market to Doe Fifty Market (Inclusive of All Intervening Numbers as though each Market Was Severally and Separately Designated); Doe One Bakery to Doe Fifty Bakery (Inclusive of All Intervening Numbers as though each Bakery Was Severally and Separately Designated); Doe One to Doe One Thousand (Inclusive of All Intervening Numbers as though each Said Doe Was Severally and Separately Designated, Defendants

COMPLAINT FOR INJUNCTION AGAINST ACTS IN RESTRAINT OF
TRADE AND FOR DAMAGES THEREFOR

Comes now the plaintiff and complains of defendants, and each of them, and for cause of action alleges:

I

That the plaintiff is now, and at all times hereinafter mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal office for the transaction of business located in the City of Los Angeles, County of Los Angeles, State of California.

II

That plaintiff is now, and at all times hereinafter mentioned was, doing business under the fictitious firm name and style of Danish Maid Bakery, and that it has complied with the provisions of Sections 2466 and 2467 of the Civil Code of the State of California.

III

That the defendants Bakery Drivers Local Union Number 276, an unincorporated association; Bakery and Confectionery Workers International Union of America, Local Union No. 37, an unincorporated association; Joint Council of Teamsters of Southern California Number

42, an unincorporated association; Los Angeles Food Council, an unincorporated association; Los Angeles Central Labor Council, an unincorporated association, and Doe One Association to Doe Fifty Association (inclusive of all intervening numbers as though each association was severally and separately designated) at all times hereinafter mentioned were and are now each labor organizations or unions and are each unincorporated associations, and at all times herein mentioned have been, composed of more than two persons residing and associated in business and transacting business under a common name, as above alleged, in the County of Los Angeles, State of California; that all of said labor organizations are associated with one another and with the American Federation of Labor and are hereafter referred to as defendant associations.

IV

That at all times herein mentioned the defendant Charles A. Bolton was, and is now, the financial secretary and member of defendant Bakery Drivers Local Union Number 276, an unincorporated association; that at all times herein mentioned defendant Henry J. Becker was, and is now, a member and business agent thereof; that at all times herein mentioned defendant, Ray Gulick was, and is now, the secretary and member of defendant, Bakery and Confectionery Workers International Union of America, Local Union 37, an unincorporated association; that at all times herein mentioned T. O. Turner, was and is now a member and officer thereof; that at all times herein mentioned defendant Einar Mohn was, and is now, the President and member of defendant Joint Council of Teamsters of Southern California Number 42, an unincorporated association; that at all times herein mentioned defendant Thomas Ranford was, and is now the President and member of the Central Labor Council; that at all times herein mentioned defendant Mae Stoneman was, and is now, Vice President [fol. 21] thereof; that at all times herein mentioned defendant W. J. Bassett was, and is now, Secretary thereof.

V

That each of the defendant associations herein has numerous members and associates and it is impracticable, if not impossible, to bring all of said members and all of the officers, agents and associates of each of the defendant associations into this action as defendants; that plaintiff does not know the names of most of the members of each of the defendant associations; that the issues and questions involved in this action are of a common or general interest to each of the individual defendants herein as members of the defendant associations that for this reason the individual defendants herein are made parties defendant, both individually and as representatives of the respective defendant associations of which they are members, and that they, and each of them, are hereby charged with defending this action for the benefit of all of the other members of the defendant associations.

VI

That plaintiff is not aware of the true names of defendants Doe One Association to Doe Fifty Association (inclusive of all intervening numbers as though each said association was severally and separately designated), each an unincorporated association, and therefore sues said associations by such fictitious names; a leave of Court will be asked to amend this complaint to substitute their true names when same have been ascertained. Plaintiff is not aware of the true names or capacities whether individual, corporate, associate or otherwise, of defendants Doe One Market to Doe Fifty Market (inclusive of all intervening numbers as though each market was severally and separately designated); the defendants Doe One Bakery to Doe Fifty Bakery (inclusive of all intervening numbers as though each bakery was severally and separately designated); and [fol. 22] defendants Doe One to Doe One Thousand (inclusive of all intervening numbers as though each said Doe was severally and separately designated), and therefore sues said defendants by such fictitious names; leave of Court will be asked to amend this complaint to substitute their true names and capacities when same have been ascertained.

VII

The defendants Doe One Association to Doe Fifty Association (inclusive of all intervening numbers as though each association was severally and separately designated), each an unincorporated association, defendants Doe One Corporation to Doe Fifty Corporation (inclusive of all intervening numbers as though each corporation was severally and separately designated), defendants Doe One Market to Doe Fifty Market (inclusive of all intervening numbers as though each market was severally and separately designated), defendants Doe One Bakery to Doe Fifty Bakery (inclusive of all intervening numbers as though each bakery was severally and separately designated) and defendants Doe One to Doe One Thousand (Inclusive of all intervening numbers as though each said Doe was severally and separately designated), and each of them, are now, and at all times herein mentioned were, parties to the unlawful activities hereinafter mentioned and have been acting in concert with the specifically named defendants with respect to the acts and matters hereinafter mentioned and with respect to the unlawful activities hereinafter described, except as otherwise stated. That each of the aforesaid Doe defendants are now, and at all times hereinafter mentioned were, persons residing in, or associated in business under a common name or as a corporation in the County of Los Angeles, State of California.

VIII

Plaintiff is informed, and believes, and on such information and belief alleges, that defendant Carl's Ranch Markets, Inc., a corporation, is doing business under the fictitious firm name and style of Carl's Market and under the fictitious firm name and style of Best Buy Market; and that Harry Caplan, Inc., a corporation, is doing business under the fictitious firm name and style of Carl's Market; and that Valley Stores, Inc., a corporation, is doing business under the fictitious firm name and style of Valley Market; and are corporations duly organized, existing and engaged in the retail food market business in the State of California with principal places of business in the County of Los Angeles, State of California. Plaintiff

is informed and believes, and upon such information and belief alleges, that Harry Caplan, a sole proprietor, is engaged in the retail food market business in the County of Los Angeles, State of California; that defendant Doe One Market to Doe Fifty Market (inclusive of all intervening numbers as though each market was severally and separately designated) are partnerships or sole proprietorships or corporations engaged in the retail food market business in the County of Los Angeles, State of California; that said defendants are hereinafter referred to as defendant markets; that defendant markets own and operate, in the County of Los Angeles, State of California, self service food markets.

IX

That plaintiff is now, and at all times, hereinafter mentioned was, engaged in the business of baking and selling a comprehensive line of bakery goods, including cakes, pies, bread, rolls, buns, cup cakes, coffee cake, cookies, tarts, muffins and do-nuts (hereinafter sometimes collectively referred to as "Plaintiff's merchandise") for distribution to the purchasers of same, in the County of Los Angeles, and vicinity, California. Plaintiff has adopted and uses as a trade mark for its merchandise the name "Danish Maid" and is the sole and exclusive owner of said trade mark.

One of the methods in which plaintiff merchandises its [fol. 24] bakery products is to sell and deliver its merchandise, packaged, to food markets for self service sale by said food markets to the general public; in general, plaintiff has installed in said food markets wooden gondola fixtures on which plaintiff's packaged merchandise is displayed and sold to the self service retail trade; said gondola fixtures bear plaintiff's trade mark "Danish Maid"; said food markets receive daily, except Thursdays and Sundays, plaintiff's fresh baked packaged merchandise in metal cabinets at their delivery entrance and put said merchandise on the gondola fixture shelves for sale to the self service retail trade; the empty metal cabinets are picked up by plaintiff upon the delivery of the next order of said merchandise.

Plaintiff commenced its packaged merchandise operation in the summer of 1951, with its first customer food market.

By February 1, 1952, Plaintiff had increased the number of such customer food markets to sixteen with agreements from three prospective customer food markets to purchase plaintiff's packaged merchandise as soon as plaintiff was able to make delivery of same. Since January 1, 1952, plaintiff has been increasing the number of its customer food markets at the rate of one new customer a week; said rate of increase would be continued but for the activities pursuant to and in furtherance of the conspiracy, combination and agreement in restraint of trade as hereinafter alleged and described.

The aforesaid method of merchandising on the part of the plaintiff is a new and unique method of merchandising fresh baked bakery goods. By this method of merchandising plaintiff has been offering to the food markets a variety of high quality bakery products for sale by said food markets from a self service fixture. Ordinarily bakery products of similar quality are sold from separate bakery concessions; said bakery concessions are generally separate and apart from the self service food market area and are operated by either bakeries or persons independent of the [fol. 25] food market; the person or persons operating said bakery concession sell the bakery products by removing unpackaged bakery products from the display case, wrapping the bakery products and handing them to the retail customer and accepting payment therefor. By the sale of this type of merchandise from a self-service fixture in the food sales area of a retail market the amount of space needed to sell said merchandise is reduced. Food markets which do not have a sufficient space or volume of business to support a concession bakery operation can merchandise high quality fresh baked products by this self-service method; said food markets are able to offer to their customers a variety of high quality fresh baked products which they would not otherwise be able to do. The profit of the food market operator is further increased in that he receives a profit proportionate to the amount of bakery goods sold rather than a small rental fee from a concessionaire. Further this operation fits into the general pattern of self-service merchandising in food markets.

X

Plaintiff operates on a five-day week; plaintiff's bakery is closed on Wednesdays and Saturdays; plaintiff makes no delivery of its merchandise to food markets on Thursday and Sunday the day following the day on which the plaintiff's bakery is closed; plaintiff makes deliveries of its merchandise to said food markets on all other days of the week.

XI

The plaintiff is being injured and is threatened with irreparable injury by reason of the combination and conspiracy hereinafter described; its right to conduct its business without interference or molestation through the unlawful conduct of the defendants hereinafter complained of is similarly impaired or threatened with impairment by reason of said combination and conspiracy which is directed against it.

[fol. 26]

XII.

Plaintiff is informed and believes, and upon such information and belief alleges that defendant Doe One Bakery to Doe Fifty Bakery (inclusive of all intervening numbers as though each bakery was severally and separately designated) are doing business in the County of Los Angeles, State of California; that said defendants are hereinafter referred to as defendant bakeries. That defendant bakeries are engaged in the business of baking and selling fresh baked bakery goods, including cakes, pies, bread, rolls, buns, cup cakes, coffee cakes, cookies, tarts, muffins, and do-nuts; that defendant bakeries are competitors of plaintiff and that the products of defendant bakeries compete with the products of plaintiff in the open competitive market.

XIII.

Plaintiff is informed and believes, and upon such information and belief alleges, that defendants Bakery and Confectionery Workers International Union of America, Local Union 37 (hereinafter referred to as defendant Bakery Workers Union) and Bakery Drivers Local Union Number 276 (hereinafter referred to as Bakery Drivers Union) have

entered into written collective bargaining agreements with defendant bakeries; that such written collective bargaining agreements provide for a five-day work week; that defendant bakeries have subsequently agreed with said defendant associations that there should be no delivery and sale of fresh baked bakery products on Wednesdays of each week and thus no sale of fresh baked bakery products to the general public on Wednesdays of each week.

XIV.

The defendant associations, their members and officers, and each of them, have been and now are engaged in an unlawful conspiracy combination and agreement, contrary to the common law of the State of California and contrary to the provisions of the Cartwright Act (Stats. 1907, p. 1835, [fol. 27] Ch. 530), now constituting Chapter 2 of Part 2, Division 7, of the Business and Professions Code, sections 16720, et seq., to create and carry out restrictions in trade and commerce and to prevent competition in manufacturing, making, transporting, selling and purchasing of bakery products as hereinafter set forth. An object of said conspiracy, combination and agreement is to restrain and destroy the trade and business of plaintiff and to prevent competition of plaintiff's packaged merchandise in food markets with competing bakery products; that plaintiff is informed and believes, and upon such information and belief alleges, that the aforesaid defendants entered into said conspiracy, combination and agreement with the consent, encouragement and inducement of defendant bakeries and that defendant bakeries have entered into the aforesaid conspiracy, combination and agreement in restraint of trade.

XV.

That prior to the first day of February, 1952, defendant markets made daily orders of plaintiff's packaged merchandise from plaintiff, and plaintiff did deliver and sell to said defendant markets its packaged merchandise for sale by said defendant markets to the self service retail trade and the general public; that defendant markets on and after the seventh day of February, 1952, have agreed with defendant associations not to purchase plaintiff's packaged merchandise; that defendant markets entered into the aforesaid

agreement with defendant Unions by reason of the unlawful coercion, threats of injury to business and other similar unlawful acts and conduct on the part of defendant Unions as hereinafter described. That by the aforesaid agreement, defendant associations have prevented defendant markets from exercising their free choice in the selection of products offered for sale, in defendant markets, in the free and open competitive market; that defendant markets are united in [fol. 28] interest with plaintiff in that defendant markets seek to exercise their own free choice in the selection of products offered for sale, in their markets, in the free and open competitive market and that defendant markets have exercised this choice by buying plaintiff's merchandise; that defendant markets are now prevented from buying plaintiff's merchandise by reason of the unlawful coercion, threats of injury to business and other similar unlawful acts and conduct on the part of defendant associations as aforesaid; that defendant markets would not consent to being joined as party plaintiffs in this action; that plaintiff is informed and believes; and upon such information and belief alleges, that said consent was not given by defendant markets by reason of the fear of defendant markets of future unlawful acts and conduct on the part of defendant associations and their members which acts and conduct would injure defendant markets property and business; defendant markets are therefore made defendants in this action.

XVI.

Defendant associations have objected to the delivery of plaintiff's packaged merchandise to food markets for sale by said food markets to the self-service retail trade on Wednesdays of each week; plaintiff is informed and believes, and upon such information and belief alleges, that defendant bakeries have objected to the delivery of plaintiff's packaged merchandise to food markets for sale by said food markets to the self-service retail trade on Wednesdays of each week. That an object of said conspiracy, combination and agreement in restraint of trade is to prevent the delivery of plaintiff's packaged merchandise to food markets for sale by said food markets to the self-service retail trade on Wednesdays of each week.

XVII.

At all times mentioned herein, plaintiff was distributing [fol. 29] and selling its packaged merchandise to food markets for sale by said food markets to the self-service retail trade, including defendant markets; that from on or about the first day of January, 1952, plaintiff was increasing the number of food markets purchasing its packaged merchandise as aforesaid at the rate of approximately one per week; that on and after February 6, 1952, by reason of the coercive concerted activities of defendant associations, as hereinafter set forth, defendant markets have refused to order, buy or accept further delivery of plaintiff's packaged merchandise, and have discontinued the selling of same in their respective markets. The refusal of said defendant markets to buy plaintiff's merchandise is the direct result of the aforesaid conspiracy, combination and agreement to restrain trade and to prevent the sale of plaintiff's merchandise in the free and open competitive market; that thereby the general public has been deprived of the opportunity of purchasing plaintiff's packaged merchandise at said defendant markets; that defendant markets purchase their merchandise, including thousands of items, from suppliers some of whose employees are affiliated with the American Federation of Labor, the Congress of Industrial Organizations, independent labor organizations or some of whose employees are not affiliated with any labor organization; that should the acts of defendant associations and their members and each of them, pursuant to and in furtherance of the aforesaid conspiracy, combination and agreement, be allowed to continue plaintiff will be unable to sell its packaged merchandise to food markets in the geographical competitive area in which it competes, the County of Los Angeles and vicinity, California; that thereby the general public are being and will be further deprived of the opportunity of purchasing plaintiff's packaged merchandise in food markets in said geographical competitive area; that plaintiff is informed and believes, and upon such information and [fol. 30] belief alleges, that defendant associations, pursuant to and in furtherance of the aforesaid conspiracy, have not deprived, nor are they attempting to deprive any

other bakery from access to this competitive field, the food market self-service trade.

XVIII.

Plaintiff's packaged merchandise is in competition with the product baked, delivered and sold by defendant bakeries; the employees of defendant bakeries are members of the respective defendant associations according to their job classification; the employees of defendant bakeries, who deliver and sell defendant bakeries' products, are members of defendant bakery drivers' union; that said employees are described as Driver Salesmen and each receives a guaranteed salary, plus a commission on the amount of bakery goods over a specified minimum which he delivers and sells to food markets or other bakery outlets; the increase in the growth of plaintiff's packaged merchandise customers and increases in the sale of plaintiff's packaged merchandise has resulted in a corresponding decrease in the sale of the bakery goods of defendant bakeries and also in the commissions of said driver salesmen, members of defendant bakery drivers' union and Doe One Association to Doe Fifty Association (inclusive of all intervening numbers as though each association was severally and separately designated); that an object of aforesaid conspiracy, combination and agreement is to prevent the further decrease in the sale of bakery goods of defendant bakeries and of the commissions of said driver salesmen.

XIX.

That in or around November, 1951, and thereafter, the defendants and each of them, other than defendant markets, did conspire to do the acts hereinbelow set forth pursuant to and in furtherance of aforesaid conspiracy, combination and agreement in restraint of trade, and that said acts were [fol. 31] done as hereinbelow set forth:

a. That in or around the month of November, 1951, members of defendant associations did trail employee truck drivers of plaintiff who were delivering plaintiff's packaged merchandise to plaintiff's food market customers; that defendant associations thereby gained knowledge of plaintiff's food market customers and thereby were able to intim-

idate and coerce said food market customers as hereinafter set forth.

b. On and after February 4, 1952, defendant associations demanded of the following food markets, to-wit :

- Best Buy Market, 1526 East Florence, County of Los Angeles, California ;
- Carl's Market, 2601 Pasadena Avenue, Los Angeles, California ;
- Carl's Market, 508 North Doheny Drive, Los Angeles County, California ;
- Carl's Market, 3488 West Eighth Street, Los Angeles, California ;
- Valley Market, 12903 Moorpark, North Hollywood, California ;
- Arrow Market, 8315 Santa Monica Boulevard, Los Angeles, California ;
- Lamarr's, 706 West Las Tunas, San Gabriel, California ;
- Fitzsimmon's Market, 2430 Glendale Boulevard, Los Angeles, California ;
- Robert's Market, 420 North Broadway, Santa Monica, California ;

that said markets discontinue ordering, buying, and taking delivery of plaintiff's merchandise ; that defendant associations threatened to picket said food markets if said food markets did not comply with the demands of defendant associations.

c. That defendant associations did patrol, picket and placard the delivery and customer entrances of the following food markets ; that the locations of said food markets are set forth following the name of said markets ; that the time at which said patrolling, picketing and placarding began, is set forth following the name and address of said market :

- Carl's Market, 3488 West Eighth Street, Los Angeles, California, February 7, 1952 ;
- Valley Market, 12903 Moorpark, North Hollywood, California, February 11, 1952 ;
- Fitzsimmon's Market, 2430 Glendale Boulevard, Los Angeles, California, February 12, 1952 ;

Robert's Market, 420 North Broadway, Santa Monica, California, February 12, 1952;

said pickets carried a placard or sign that contained the following language:

"To the Public
 Danish Maid
 Bakery Products
 Sold Here Are Made
 and Delivered by
 a Bakery that is
 Non - Union
 and on the
 We Do Not Patronize List
 of the
 Los Angeles Central Labor Council
 Los Angeles Food Council
 Joint Council of Teamsters' Union 42
 Bakery Drivers' Local 276
 Bakers' Local Number 37"

[fol. 33] d. That at said respective times and places, while said picketing, patrolling and placarding was taking place, the drivers of delivery trucks of the following suppliers of the aforesaid food markets, refused to make deliveries at the aforesaid food markets while said picketing was in progress: Weber Baking Company, Swift and Company, Cudahy Packing Co., Langendorf Bakery, Wonder Baking Company, Barbara Ann Bakery, Orowheat, National Biscuit Company, Knudsen Creamery Co., Challenge Creamery, Log Cabin Bread, Golden State Milk Company, Iris Food Company, John W. Sander Company, Jersey Maid Dairy Company, and Pellissier Farms Dairy. That said drivers were members of defendant Bakery Drivers Union, defendant Doe One Association to Doe Fifty Association (inclusive of all intervening numbers as though each association was severally and separately designated), which labor organizations are affiliated with defendant Joint Council of Teamsters of Southern California Number 42, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, defendant Los Angeles Central Labor Council, and the American Federation of Labor; that said

drivers will not cross the picket line which is being conducted by said affiliated labor organizations for fear of penalty by way of fine, suspension or expulsion from membership in said labor organization resulting in loss of said drivers' job.

e. (1) That defendant, Carl's Ranch Markets, Inc., a corporation, which owns and operates aforesaid Carl's Market, located at 3488 West 8th Street, Los Angeles, California, and aforesaid Best Buy Market, thereupon discontinued ordering, buying and accepting delivery of plaintiff's merchandise on or about February 7, 1952, and that thereupon no further deliveries of plaintiff's merchandise have been made at said food markets.

(2) That defendant, Harry Caplan, who owns and operates aforesaid Carl's Market, located at 508 North Doheny [fol. 34] Drive, Los Angeles, County, California, thereupon discontinued ordering, buying and accepting delivery of plaintiff's merchandise on or about February 7, 1952, and that thereupon no further deliveries of plaintiff's merchandise have been made at said food market.

(3) That defendant, Harry Caplan, Inc., a corporation, which owns and operates aforesaid Carl's Market, located at 2601 Pasadena Avenue, Los Angeles, California, thereupon discontinued ordering, buying and accepting delivery of plaintiff's merchandise on or about February 7, 1952, and that thereupon no further deliveries of plaintiff's merchandise have been made at said food market.

(4) That defendant Valley Stores, Inc., owner of Valley Market, thereupon discontinued ordering, buying, and accepting deliveries of plaintiff's merchandise on or about February 12, 1952, and that thereupon further deliveries of plaintiff's merchandise have not been made at that food market; that at said time defendant, Valley Stores, Inc., also cancelled plaintiff's bakery concession at the Valley Market, located at 11418 Moorpark Avenue, North Hollywood, California, and that since that time plaintiff's merchandise has not been sold from said bakery concession.

XX.

None of the members of the defendant associations, nor any of the other defendants above named, have been at any

of the times herein referred to, nor are they now, employees of the plaintiff, and this action is not litigation between an employer and his employees respecting the terms or conditions of employment. There is no dispute between plaintiff and its own employees concerning wages, hours and working conditions. At all times herein mentioned, defendant associations have made no demand on plaintiff with regard to representation by defendant associations of plaintiff's employees, or any of them, and have made no demands to be recognized by plaintiff as the bargaining agent of plaintiff's employees or any of them. Plaintiff is informed and believes, and upon such information and belief alleges, that at all times herein mentioned defendant associations have not approached the employees of plaintiff, or any of them, with regard to representation by defendant associations of plaintiff's employees, or any of them, and have not asked plaintiff's employees, or any of them, to join defendant associations.

XXI.

The character of the unlawful acts done and being done by the defendants pursuant to the combination and conspiracy hereinabove described is such that the property rights of plaintiff to continue to engage in trade and business without molestation or interference will suffer great and irreparable damage unless the above described combination, and the acts done and being done by the defendants in furtherance thereof, be declared to be lawful, and, inasmuch as plaintiff has no adequate remedy at law for the injuries caused by such acts, an injunction in the form hereinafter prayed for should be granted. On or about February 1, 1952, plaintiff was selling approximately \$12,000 per month of packaged merchandise to retail food markets. As of February 15, 1952, by reason of the acts done pursuant to and in furtherance of the unlawful conspiracy combination and agreement in restraint of trade, plaintiff's packaged merchandise business has decreased by approximately \$3500 per month. If said acts are allowed to continue said packaged merchandise business will be completely eliminated. This will materially damage and possibly destroy plaintiff's business. Plaintiff has expended much time, energy and money in building its business and obtaining

its good will, and should its business be destroyed the loss will be irreparable. Thus, with respect to any and all relief [fol. 36] herein sought, the denial of such relief to plaintiff will inflict far greater injury upon the plaintiff than would be sustained by the defendants should the relief asked for be granted. The defendants, and each of them, have done, and are now doing, threaten to continue to do and will continue to do the acts and things herein alleged unless restrained and enjoined by the Court.

XXII.

That by reason of the acts and conduct of defendants, and each of them, which were and are carried on as part of the unlawful conspiracy, combination and agreement in restraint of trade, plaintiff at present makes no deliveries and sales of its packaged merchandise to defendant markets for sale by defendant markets to the retail self service trade; that it is extremely difficult to measure precisely the monetary damage to plaintiff in loss of business, profits and good will resulting therefrom from February 1, 1952 to date and the future monetary damage to date and the future monetary damage to plaintiff in loss of business, profits and good will which will continue result therefrom. Plaintiff's opportunity to expand its packaged merchandise customers has been completely curtailed by reason of the fear on the part of prospective customer food markets that they will be subjected to the same coercive concerted activities by defendant associations as were defendant markets. An estimate of the amount of special damage resulting from said unlawful conspiracy, combination and agreement to date is \$50,000, which sum will increase as long as such acts continue. Unless the relief prayed for is granted, a multiplicity of suits and actions will result because of the necessity of bringing repeated actions for damages so long as such acts continue.

XXIII.

Plaintiff has no plain, speedy or adequate remedy at law in that it is extremely difficult, if not impossible, to measure [fol. 37] the amount of monetary damages which would compensate plaintiff for the wrongful acts of the defendants, and in any event pecuniary damage would not afford

adequate and complete relief to plaintiff. Furthermore, plaintiff is informed and believes, and upon information and belief alleges the fact to be, that many of the defendants and members of defendant associations are incapable of responding financially in damages, and unless the injunctive relief prayed for is granted, plaintiff will be unable to be compensated for the injury sustained by it. Further and great and irreparable damage to plaintiff, its good will and business, can only be prevented by enjoining the unlawful activities of defendants herein described.

XXIV.

Plaintiff is informed and believes, and upon information and belief alleges, that each and all of the foregoing acts by defendants, and each of them, other than defendant markets, were done maliciously, wrongfully and oppressively, and with intent to injure, vex, harrass and annoy plaintiff and with the objective to do great injury to plaintiff's business by reason of which plaintiff asks that exemplary damages be assessed against the defendants, and each of them, other than defendant markets in the sum of \$100,000.00.

Wherefore, plaintiff prays judgment against the defendants, and each of them, as follows:

(a) That this Court declare said conspiracy, combination and agreement, and all the acts done and being done in furtherance thereof, as aforesaid, to be unlawful, in restraint of trade and contrary to the Cartwright Act of the State of California (Stats. 1907, p. 1835, ch. 530), now constituting chapter 2, Part 2, Division 7, Business and Professions Code, sections 16720, et seq.

(b) For a permanent injunction, restraining and enjoining the defendants, and each of them, their officers, agents, [fol. 38] representatives, members, employees, attorneys, pickets and confederates, and each of them, and all persons acting by, through, or in concert with said defendants, and all persons acting in aid of or in conjunction with them, or any of them, from doing, or attempting or threatening to do, or causing to be done, whether directly or indirectly, by any means, method or device whatsoever, any of the following things: In any manner conspiring, combining or agree-

ing to create or carry out restrictions in the trade or commerce of plaintiff, or to prevent competition in making, selling, and delivering of plaintiff's merchandise with other competitive products, by

(1) Inducing or seeking or attempting to induce any person to refrain from purchasing plaintiff's merchandise by picketing or threatening to picket plaintiff, or plaintiff's customers or prospective customers, boycotting or threatening to boycott plaintiff, or plaintiff's customers or prospective customers, placarding or threatening to placard plaintiff, or plaintiff's customers or prospective customers, listing plaintiff, or plaintiff's customers or prospective customers as unfair, or other acts of interference with plaintiff, or plaintiff's customers or prospective customers.

(2) Stationing or maintaining any pickets at or about plaintiff's place of business or at the place of business of any of plaintiff's customers or prospective customers or threatening to do same; or bannering, placarding or boycotting plaintiff, or plaintiff's customers or prospective customers, in any manner or threatening to do same.

(3) Imposing any penalties against the employees of any persons transacting business in any form with plaintiff's customers or prospective customers for the purpose of preventing said persons from doing business with plaintiff's customers or prospective customers.

[fol. 39] (4) In any manner whatsoever diverting, seeking or attempting to divert the sale and delivery by plaintiff of its merchandise on Wednesdays of each week.

(5) Inducing, ordering or in any manner or by or through any means or method, requiring any person to execute or enter into or to observe, carry out or perform any contract, agreement or understanding which, in substance or effect, requires such person not to purchase any merchandise from plaintiff.

(6) Inducing, ordering, directing or requiring any person or persons to refuse to transport merchandise to or from plaintiff or to or from plaintiff's customers, while said person or persons are permitted to transport merchandise to persons, in similar classifications or categories who do not do business or purchase merchandise from plaintiff.

(7) Adopting, promulgating or enforcing any rule or regulation, forbidding the members of any defendant association to do business with plaintiff, or plaintiff's customers, or handling the goods, produce and merchandise of plaintiff, or plaintiff's customers, and from fining, expelling or otherwise disciplining any of said members for disobeying any such rule or regulation.

(8) Asserting in any way that plaintiff is unfair to organized labor, or to the American Federation of Labor, or to any union associated therewith, or placing plaintiff on any "unfair" or "We do not patronize" list.

(9) From enforcing any agreement, or any clause of any agreement, which provides that a self service food market shall not purchase any goods, merchandise or food from any supplier of same which supplier is on the "unfair" or "We do not patronize" list of defendant associations.

(c) For a preliminary injunction of the same tenor and effect as the permanent injunction herein prayed for, to continue in full force and effect until and during the trial [fol. 40] of this action and the final determination thereof.

(d) For a temporary restraining order of the same tenor and effect as the permanent injunction herein prayed for pending the hearing on application for preliminary injunction and for an order to show cause why the preliminary injunction heretofore referred to should not issue; and

Wherefore, plaintiff prays further judgment against the defendants and each of them, other than defendant markets, as follows:

(e) For general damages for loss of business, good will and customers, in the amount of \$300,000.00.

(f) For special damages in the sum of \$50,000 and for such additional amounts of damage as plaintiff may prove at the trial hereof; plaintiff prays leave to amend the complaint in accordance with proof thereof.

(g) For twofold the damages sustained by plaintiff as provided by Business and Professions Code, Section 16750.

(h) For exemplary damages in the sum of \$100,000.

(i) For plaintiff's costs in this action and for such other and further relief as the Court may deem proper.

Hyman Smith and Howard R. Harris, Hill, Farrer & Burrill, by Carl M. Gould, Attorneys for Plaintiff.

[fol. 41] STATE OF CALIFORNIA,

County of Los Angeles, ss:

G. Brashears, being first duly sworn, deposes and says:

That he is the President of plaintiff corporation; that he has read the foregoing Complaint for Injunction and Damages and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated upon information and belief, and as to those matters he believes it to be true.

G. Brashears.

Subscribed and sworn to before me this 18th day of February, 1952.

Hyman Smith, Notary Public in and for the County of Los Angeles, State of California. My commission expires April 25, 1954. (Seal.)

[fol. 42] EXHIBIT 3 TO COMPLAINT

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR
RELATIONS BOARD, TWENTY-FIRST REGION

Case No. 21-CC-130

In the Matter of BAKERY DRIVERS LOCAL UNION No. 276,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL and
Capital Service, Inc.

COMPLAINT

It having been charged by Capital Service, Inc. (hereinafter called Capital), that Bakery Drivers Local Union No. 276, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL (hereinafter called Respondent), has engaged in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, Public Law 101—80th Congress, First Session (hereinafter called the Act), the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-First Region,

designated by the Board's Rules and Regulations, Series 6, Section 102.15, hereby issues this Complaint and alleges as follows:

I

(a) Capital is engaged in the manufacture and distribution of bakery products in Los Angeles, California. During 1951 it purchased raw materials valued in excess of \$500,000, of which raw materials of the value of approximately \$30,000 were received directly from outside the State of California and of the value of approximately \$175,000 were received indirectly from outside the State of California.

[fol. 43] (b) Thriftmart, a retail food market located in Los Angeles, is a customer of Capital. In 1951, Thriftmart received merchandise valued at approximately \$300,000 directly and indirectly from sources outside the State of California.

(c) Boys Valley Market No. 4, a retail food market located in Los Angeles, California, is another customer of Capital. During 1951, Boys Valley Market No. 4 received merchandise valued at approximately \$800,000 directly from sources outside the State of California, and received merchandise valued at approximately \$1,000,000 indirectly from outside the State of California.

(d) Valley Stores No. 1 and No. 2 are other customers of Capital located in North Hollywood, California. During 1951 Valley Stores No. 1 and No. 2 received merchandise valued at approximately \$250,000 indirectly from outside the State of California.

(e) Weber Baking Co. is engaged at Glendale, California, in the manufacture and distribution of bakery products. Among others, it supplies bakery products to Valley Stores No. 1 and No. 2 and Boys Valley Market No. 4, which are also customers of Capital.

(f) Pellissier Dairy is engaged at Los Angeles, California, in the manufacture and distribution of dairy products. Among others, it supplies dairy products to Thriftmart, which is also a customer of Capital.

(g) Folger's Coffee is engaged at Los Angeles, California, in the distribution of coffee. Among others, it supplies coffee to Thriftmart, which is also a customer of Capital.

II

The employers referred to in paragraph I (a) through (g) above, both individually and collectively, are and at all times material herein have been engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

[fol. 44]

III

Respondent is a labor organization within the meaning of Section 2, subsection (5) of the Act.

IV

Since on or about February 7, 1952, Respondent has engaged in, and by picketing, orders, instructions, directions, appeals, and other means, has induced and encouraged employees of customers of Capital and their suppliers, including Thriftmart, Boys Valley Market No. 4, Valley Stores No. 1 and No. 2, Weber Baking Co., Folger's Coffee, and Pellissier Dairy, to engage in strikes or concerted refusals in the course of their employment to use, manufacture, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform services, an object thereof being to force or require the said customers of Capital to cease using, selling, handling, transporting or otherwise dealing in the products of Capital or to cease doing business with Capital.

V

Respondent, by the acts and conduct set forth and described in paragraph IV above, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b), subsections (1) (A), (4) (A) and (4) (B) of the Act.

VI

The acts and conduct of Respondent, as set forth and described in paragraph IV above, occurring in connection with the business of Capital and the other companies, as set forth and described in paragraph I above, has a close, intimate and substantial relationship to trade, traffic and commerce among the several states of the United States, lead to,

and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

[fol. 45]

VII

The acts and conduct of Respondent hereinabove set forth, constitute unfair labor practices affecting commerce within the meaning of Section 8 (b), subsections (1) (A) and (4) (A) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-First Region, issues this Complaint against Bakery Drivers Local Union No. 276, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL.

Issued at Los Angeles, California, this 14th day of May, 1952.

Howard F. LeBaron, Regional Director, National Labor Relations Board, Twenty-First Region.
(Seal.)

[fol. 46]

EXHIBIT 4 TO COMPLAINT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF LOS ANGELES

No. 595,892

CAPITAL SERVICE, INC., Plaintiff

VS.

BAKERY DRIVERS LOCAL UNION NUMBER 276, ET AL.,
Defendants

Preliminary Injunction

On February 29, 1952, the above cause came on regularly for hearing in Department 34 of the above entitled court, before the Honorable Frank G. Swain, Judge Presiding, and

the same having been continued from February 29, 1952, to March 3, 1952, and the matter having come on regularly for hearing on March 3, 1952, in Department 34 of the above entitled court, before the Honorable Frank G. Swain, Judge Presiding, on the verified complaint heretofore filed herein, the order to show cause why a preliminary injunction should not issue herein, and the affidavits and points and authorities filed on behalf of the respective parties hereto; the plaintiff appearing by its attorneys of record and the defendants Bakery Drivers Local Union Number 276, Charles A. Bolton, individually and as a member and officer thereof, Henry J. Becker, individually and as a member and officer thereof, Ray Gulick, individually and as a member and officer thereof, T. O. Turner, individually and as a member and officer thereof, Joint Council of Teamsters of Southern California No. 42, an unincorporated association, Einar Mohn, individually and as President thereof, Los Angeles Food Council, an unincorporated association, Los Angeles Central Labor Council, and unincorporated association, Thomas Ranford, individually and as a member and officer thereof, Mac Stoneman, individually and as a member and officer thereof, W. J. Bassett, individually and as a member and officer thereof, appearing by their attorneys, John C. Stevenson and Lionel Richman, and the defendants Bakery and Confectionery Workers International Union of America, Local Union No. 37, and William Ring appearing by their attorneys, Gilbert, Nissen & Irvin and the court having considered the evidence submitted and having heard the arguments of counsel and being fully advised in the premises, and the cause having been submitted for decision and it appearing to the above entitled court that a preliminary injunction should issue in the premises;

It is hereby ordered and decreed as follows:

That pending the further order of the court herein, the defendants who appeared herein as above stated and each of them and their agents, employees, representatives, officers, organizers and attorneys and all persons acting in concert or participation with them are hereby absolutely enjoined and restrained during the pendency of the above

entitled action and until its final determination, or until the court shall otherwise order, from:

1. Inducing or seeking or attempting to induce any person to refrain from purchasing plaintiff's merchandise by picketing plaintiff's customers or prospective customers.

2. Stationing or maintaining any pickets at or about the place of business of any of plaintiff's customers or prospective customers or threatening to do same.

Dated: April 7, 1952.

Frank G. Swain, Judge of the Superior Court.

This preliminary injunction is issued upon the condition that plaintiff post a bond in the form provided by law in the sum of \$2,000.00, with the clerk of this court.

[fol. 49] EXHIBIT 5 TO COMPLAINT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF LOS ANGELES

No. 595,892

CAPITAL SERVICE, INC., a California Corporation, doing business under the fictitious firm name and style of DANISH MAID BAKERY, Plaintiff

vs.

BAKERY DRIVERS LOCAL UNION NUMBER 276, et al., Defendants

MEMORANDUM OPINION

The plaintiff owns and operates the Danish Maid Bakery. The defendants principally concerned are two labor unions which seek to unionize (1) the bakery workers of the plaintiff and (2) the plaintiff's drivers who deliver plaintiff's products to retailers. In their efforts to accomplish this purpose these defendants have picketed retail markets to which plaintiff's bakery goods are sold. The plaintiff seeks a preliminary injunction to restrain the defendant unions from picketing its retail customers. The defendants in ques-

tion are not attempting to unionize the markets which they are picketing and have no labor dispute with them.

The plaintiff claims that this picketing is a combination in restraint of trade and therefore a violation of the Cartwright Act, now codified as B-P Code 16700-16758. The [fol. 50] plaintiff, further, relies on *Kold Kist, Inc., v. Amalgamated Meat Cutters*, 99 Cal. App. 2d 191, which holds that an attempt by a butchers' union to compel retailers to sign a contract not to sell packaged frozen meat after union butchers' closing hours was enjoined as an attempt to restrain trade. Plaintiff also relies on *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490 (a Missouri case) which holds that a union, which picketed an ice company to prevent it selling ice to a nonunion peddler it was seeking to unionize, violated the Missouri anti-trade restraint laws. In that case the ice company was picketed; not the peddler which the union was attempting to unionize. It was, therefore, a secondary picket line. In the case at bar we are concerned with a secondary picket line. The fact that in one case the seller was picketed and in the other case the buyer was picketed does not alter the situation. There was a secondary picket line in each case, if I may use that term to distinguish it from a primary picket line, i.e., a picketing of the person or company whom the union is seeking to unionize.

My difficulty in applying the Cartwright Act to the case at bar is that primary picketing is as much a combination in restraint of trade as secondary picketing and, in California, primary picketing for the purpose of unionizing a business has been declared lawful by numerous decisions such as, *C. A. Smith Market Co. v. Lyons*, 16 Cal. 2d 389; *Park & Tilford v. Teamsters Union*, 27 Cal. 2d 599.

Defendants have cited cases which hold that a secondary boycott may be used in an attempt to unionize an employer, i.e., that the union may boycott a customer of the employer it is seeking to unionize (*Parkinson v. Building Trade Council*, 154 Cal. 581). But they overlook the fact that a boycott may be legal but picketing illegal. In *Pierce v. Stableman's* [fol. 51] *Union*, 158 Cal. 70, the Supreme Court affirmed that portion of a judgment which enjoined picketing but reversed the portion which enjoined a boycott of the same employer.

No California case has been cited which holds that a court may not enjoin a secondary picket line. In that respect, therefore, I am pioneering, but I am not without principles to guide me. The United States Supreme Court on May 8, 1950, clarified the law on picketing. It is now settled that picketing may be a coercive measure and as such it is not protected by the constitutional guarantees of freedom of speech; that each state is free to allow or to prohibit picketing as it deems wise; that picketing for a purpose contrary to the public policy of a state is illegal and may be enjoined (*Building Service Employees v. Cazzam*, 331 U. S. 532; *International Brotherhood of Teamsters v. Hanloe*, 339 U. S. 470).

It is for this court to decide whether a secondary picket line is contrary to the public policy of this state. In doing this we must recognize that there are three parties affected by a labor dispute, (1) management, (2) labor and (3) the public. Formerly little attention was paid to the rights of the public but in recent years the law has increasingly recognized this third party. In *Carpenters & Joiners Union v. Ritter's Cafe*, 315 U. S. 722, the United States Supreme Court held that an injunction was proper which prohibited picketing at a place unconnected with the labor dispute. In other words, it held that picketing may, under the anti-trust laws of Texas, be confined to the situs of the labor dispute. The Taft-Hartley Law is a recognition of the rights of the public in labor disputes. In *Kold Kist v. Amalgamated Meat Cutters*, 99 Cal. App. 2d 191, the court, in granting an injunction, took cognizance of the rights of the public. The syllabus, paragraph 7, states: "Plaintiff producers of frozen foods were entitled to injunctive relief [fol. 52] from a proposed contract between stores and butchers' unions alleged to be in violation of Bus. & Prof. Code, sections 16720-16758, where the public interest and plaintiffs' business would be adversely affected by the contract, damages would be inadequate and such relief would prevent a multiplicity of suits."

The Hot Cargo Law (Labor Code 1131-1136), although declared unconstitutional by *In re Blaney*, 30 Cal. 2d 643, because it was so broad that it would have prohibited a labor union from publicizing its grievances in a newspaper, was a clear expression of the wishes of the public for re-

straint on secondary picketing. In his dissenting opinion in the Blaney case Mr. Justice Shenk recited the history of that law, p. 662: "The first act was passed in 1941 (Stat. 1941, p. 2079). The referendum was invoked against it and the effective date of the act was postponed until its approval by the electors of the state at the general election in November, 1942. . . . That act contained a provision limiting its effective duration until May 1, 1943, and thereafter during the period of war between the United States and any foreign power.

"The last session of the Legislature (Stats. 1947, p. 844, ch. 278) eliminated the emergency provision but without changing the law as enacted in 1941." The Legislature and the voters have shown that they are opposed to secondary picketing.

That secondary picketing is contrary to the public policy of this state is so clear that a court must declare that to be the law. This is not an attempt to breathe life into a dead statute. It is an exercise of the judicial power, approved by our state Supreme Court in *Hughes v. Superior Court*, 32 Cal. 2d 850, and affirmed by the United States Supreme Court in *Hughes v. Superior Court*, 339 U. S. 460, to declare the public policy of this state. The United States [fol. 53] Supreme Court said: "The fact that California's policy is expressed by the judicial organ of the state rather than by the Legislature we have repeatedly ruled to be immaterial."

A preliminary injunction will issue as prayed.

Dated: April 3, 1952.

Frank G. Swain, Judge.

[fol. 54]

EXHIBIT 6 TO COMPLAINT

Gilbert, Nissen & Irvin; Stevenson & Richman; Clarence E. Todd, 117 West Ninth Street, Los Angeles 15, California, Tucker 9266, Attorneys for Defendants.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF LOS ANGELES

No. 595,892

CAPITAL SERVICE, INC., Plaintiff,

vs.

BAKERY DRIVERS LOCAL UNION, NUMBER 276, et al., Defendants

NOTICE OF MOTION TO VACATE PRELIMINARY INJUNCTION AND
MEMORANDUM OF POINTS AND AUTHORITIES

To Capital Service Inc., plaintiff, and to Carl M. Gould, Hyman Smith and Howard R. Harris, plaintiff's attorneys:

You will please take notice that on the 25th day of April, 1952, at 9:30 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, at the courtroom of Department 34 of the above-entitled Court, the defendants enjoined and restrained by the Preliminary Injunction heretofore issued by this Court in the above-entitled action on April 7, 1952, will move the Court to vacate said Preliminary Injunction on the grounds that the Court was without jurisdiction to issue said Preliminary Injunction; that the National Labor Relations Board has assumed jurisdiction of all of the matters at issue herein and has proposed a settlement of all of said issues; upon all of the grounds and objections previously raised by the demurrer, answer and proceedings herein, and that said Preliminary Injunction was contrary to law.

[fols. 55-60] Said motion will be based upon this notice, the affidavit of Robert W. Gilbert, the Memorandum of

points and Authorities, copies of which are served herewith, and upon the pleadings, records, and files in this action.

Dated this 18th day of April, 1952.

Gilbert, Nissen & Irvin; Stevenson & Richman; Clarence E. Todd, by (S.) Robert W. Gilbert, Attorneys for Defendants Enjoined.

[fol. 61]

[File endorsement omitted.]

IN THE UNITED STATES DISTRICT COURT

Civil Action No. 14142-HW

[Title omitted]

ORDER TO SHOW CAUSE—Filed May 15, 1952

Upon the annexed complaint of the National Labor Relations Board for an injunction pursuant to Sections 1337 and 1651 of the Judicial Code (28 U.S.C. Supp. IV, Sec. 1337 and 1651) enjoining and restraining respondents Capital Service, Inc., and G. Brashears from certain acts which contravene the policies and provisions of the National Labor Relations Act, as amended, and invade the jurisdiction of this Court under said Act, and good cause appearing therefor,

It is ordered that respondents Capital Service, Inc., and G. Brashears appear before this Court at the United States Court House, Los Angeles, California, on the 23rd day of [fols. 62-69] May, 1952, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, and then and there show cause, if any there be, why a preliminary injunction should not issue enjoining and restraining them, and each of them, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them, as prayed for in said complaint; and

It is further ordered that service of a copy of this Order with the complaint annexed thereto, be made forthwith

by a United States Marshal upon respondents Capital Service, Inc., and G. Brashears in any manner provided in the Rules of Civil Procedure for United States District Courts, or by registered mail, and that proof of service be filed herein.

Done at Los Angeles, California, this 15th day of May, 1952.

—— —, United States District Judge.

Presented by Norton J. Come.

——

[fols. 70-116] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 14,142-HW Civil

MINUTES OF THE COURT Date: May 21, 1952,

At: Los Angeles, California.

Present The Honorable Harry C. Westover District Judge; Deputy Clerk: E. M. Enstrom, Jr., Reporter: Samuel Goldstein; Counsel for Plaintiff: James V. Constantine and Norton J. Come, Attorneys for Nat'l Labor Relations Board; Counsel for Defendants: Hyman Smith and Carl M. Gould.

Proceedings: For hearing motion of defendants, filed May 20, 1952, for continuance of hearing on Order to Show Cause from May 23, 1952, to June 16, 1952.

It is ordered: that all matters herein are continued to May 26, 1952, 2 PM, for hearing, with leave to the parties to file additional authorities.

Edmund L. Smith, Clerk, By E. M. Enstrom, Jr.,
Deputy Clerk.

[fols. 117-121] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 14,142-HW Civil

MINUTES OF THE COURT Date: May 26, 1952,

At: Los Angeles, Calif.

Present The Honorable Harry C. Westover, District Judge; Deputy Clerk: E. M. Enstrom, Jr., Reporter: Samuel Goldstein; Counsel for Plaintiff: Chas. K. Hackler, Chief Law Officer; Norton J. Come, James V. Constantine, Attorneys, Nat'l Labor Relations Board, for plaintiff; Counsel for Defendants: Hyman Smith, Carl M. Gould; and Ray Johnson.

Proceedings: For (1) Further hearing motion of defendants, filed May 20, 1952, for continuance of hearing on Order to Show Cause from May 23, 1952, to June 16, 1952; (2) hearing motion of plaintiff, pursuant to Order to Show Cause filed May 15, 1952, and complaint filed May 14, 1952, for preliminary injunction;

Application of defendants for a three judge court and points and authorities in support are filed.

It is ordered: that cause is continued to May 27, 1952, 10 AM, for hearing pending matters.

Edmund L. Smith, Clerk, By E. M. Enstrom, Jr.,
Deputy Clerk.

[fols. 122-130] IN UNITED STATES DISTRICT COURT

No. 14,141-HW Civil

No. 14,142-HW Civil

MINUTES OF THE COURT Date: May 27, 1952,

At: Los Angeles, California.

Present The Honorable Harry C. Westover, District Judge; Deputy Clerk: E. M. Enstrom, Jr., Reporter: Samuel Goldstein; Counsel for Pet'nr Lebaron in No. 14-141-

HW and for plaintiff in No. 14,142-HW: Chas. K. Hackler, Chief Law Officer, James V. Constantine and Norton J. Come, Att'ys, Nat'l Lbr Rel. Bd; John C. Stevenson for Respondent in Case No. 14,141-HW; Counsel Carl M. Gould, Hyman Smith, Ray Johnson; for Intervenor Capital Service Inc., in No. 14,141-HW; and same counsel for defendants in No. 14,142-HW.

Proceedings: No. 14,141-HW: For hearing petition, filed May 14, 1952, for an injunction under Sec. 10(1) of Nat'l Labor Relations Act, as amended, pursuant to Order to Show Cause filed May 15, 1952;

No. 14,142-HW: For (1) Further hearing motion of defendants, filed May 20, 1952, for continuance of hearing on Order to Show Cause to June 16, 1952; (2) hearing application of defendants, filed May 26, 1952, for three-judge court; (3) hearing motion of plaintiff, pursuant to Order to Show Cause filed May 15, 1952, and complaint filed May 14, 1952, for preliminary injunction;

(Same Order in Each Case:) Motion of petitioner in Case No. 14,141-HW to strike parts of Intervenor's answer is filed and Court orders said motion taken under submission. Memo. of plaintiff in Case No. 14,142-HW re union activity involved herein is filed.

Court orders motion of defendants in Case No. 14,142-HW, for continuance of hearing on Order to Show Cause to June 16, 1952, taken under submission.

Clarence Engwall is called, sworn, and testifies for petitioner.

Hugh Clark and Rocco Gerardi, respectively, are called, sworn, and testify for petitioner. At 12:15 PM court recesses to 2 PM.

At 2 PM court reconvenes herein, all being present as before.

Counsel argue questions of law.

Court takes judicial notice of Case 595,892, Superior Court, State of California, Capital Service vs Bakery Drivers Local Union No. 276, et al., and a portion of the answer therein is read into record.

Court takes judicial notice of Case No. 13,853-PH, District Court, Southern District of California, Capital Serv-

ice Inc., et al., vs Bakery Drivers Local Union 276, et al., and portion of motion to dismiss therein is read into record.

Rocco Gerardi testifies further for petitioner.

Bill Parker is called, sworn, and testifies for petitioner.

Petr's Ex. 1 is received in evidence.

Chester H. Leonard and Henry J. Becker, respectively, are called, sworn, and testify for petitioner.

At 4 PM Court orders both causes continued to May 28, 1952, 10 AM, for further proceedings herein.

Edmund L. Smith, Clerk, By E. M. Enstrom Jr.,
Deputy Clerk.

[fols. 131-170] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 14,141-HW Civil

No. 14,142-HW Civil

MINUTES OF THE COURT Date: May 28, 1952

At: Los Angeles, California.

Present The Honorable Harry C. Westover, District Judge;

Deputy Clerk: E. M. Enstrom, Jr., Reporter: Samuel Goldstein; Counsel for Pet'nr Lebaron in No. 14,141-HW and for plaintiff in No. 14,142-HW: Chas. K. Hackler, Chief Law Officer, James V. Constantine and Norton J. Come, Atty's, Nat'l Lbr Rel. Bd; Messrs Smith, Gould, Johnson for defendants in No. 14,142-HW.

Counsel Carl M. Gould, Hyman Smith, Ray Johnson; for Intervenor Capital Service Inc. in No. 14,141-HW)

In Case No. 14,142-HW John C. Stevenson appears for Bakery Drivers Local Union No. 276, applicant to appear amicus curiae; and in No. 14141-HW for resp.;

Proceedings: Wm E. Lamoreaux, Deputy County Counsel for Los Angeles County, appears for said county, applicant to appear amicus curiae;

At 2 PM James A. McLaughlin, George R. Richter, Jr.,

Richard A. Perkins, Leonard S. Janofsky, Wm. French Smith, appear for certain employers, applicants to appear amicus curiae;

Proceedings: (No. 14,141-HW: For (1) further hearing petition, filed May 14, 1952, for an injunction under Sec. 10(L) of Nat'l Labor Relations Act, as amended, pursuant to Order to Show Cause filed May 15, 1952; (2) further proceedings re motion of petitioner, filed May 27, 1952, to strike parts of Intervenor's answer, submitted May 27, 1952:

(No. 14,142-HW: For (1) Further proceedings re motion of defendants, filed May 20, 1952, for continuance of hearing on Order to Show Cause to June 16, 1952, submitted May 27, 1952; (2) Hearing application of defendants, filed May 26, 1952, for three-judge court; (3) Further hearing motion of plaintiff, pursuant to Order to Show Cause, filed May 15, 1952, and complaint filed May 14, 1952, for preliminary injunction;

(Same order in each case:) Henry J. Becker, heretofore sworn, testifies further for petitioner. Petnr in Case No. 14,141-HW and plaintiff in Case No. 14,142-HW rest on petition in Case No. 14,141-HW and motion for preliminary injunction in Case No. 14,142-HW.

Respondent in Case No. 14,141-HW offers no evidence.

Intervenor in Case No. 14,141-HW moves to dismiss. Court denies said motion.

O. L. Spann is called, sworn, and testifies for Intervenor.

Att'y Gould makes offer of proof re existence of labor dispute with Intervenor and offer is denied.

"Settlement Agreement" set forth commencing line 22, page 2, through line 30, page 4 of Intervenor's Answer; and "Letter" set forth on page 2, lines 8 to 18 of Intervenor's Answer (In Case No. 14,141-HW) are offered by Intervenor and received in evidence. by reference. Intervenor in Case No. 14,141-HW rests.

At 11:50 AM court recesses to 2 PM. At 2 PM court reconvenes herein.

Attorneys for various employers apply for leave to file briefs amicus curiae in Case No. 14,142-HW. Court makes no ruling. Counsel argue.

At 3:30 PM Court orders both causes continued to May

29, 1952, 10 AM, for further proceedings re pending matters.

Edmund L. Smith, Clerk, By E. M. Enstrom, Jr.,
Deputy Clerk.

[fol. 171] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 14,141-HW Civil

No. 14,142-HW Civil

MINUTES OF THE COURT Date: May 29, 1952,

At: Los Angeles, California.

Present The Honorable Harry C. Westover, District Judge; Deputy Clerk: E. M. Enstrom, Jr., Reporter: Samuel Goldstein; Counsel for Pet'nr Lebaron in No. 14,141-HW and for plaintiff in No. 14,142-HW: Chas. K. Hackler, Chief Law Officer, James V. Constantine and Norton J. Come, Atty's, Nat'l Labor Relations Board; Messrs Gould, Smith, Johnson for defendants in No. 14,142-HW; Counsel Carl M. Gould, Hyman Smith, Ray Johnson, for Intervenor Capital Service, Inc. in No. 14,141-HW) John C. Stevenson for respondent in No. 14,141-HW; and for Bakery Drivers Local Union No. 276, applicant to appear amicus curiae in No. 14,142-HW; James A. McLaughlin for various employers, applicants to appear amicus curiae in No. 14,142-HW.

Proceedings: In No. 14,141-HW: For (1) further hearing petition, filed May 14, 1952, for an injunction under Sec. 10(L) of Nat'l Labor Relations Act, as amended, pursuant to Order to Show Cause, filed May 15, 1952; (2) further proceedings re motion of petitioner, filed May 27, 1952, to strike parts of Intervenor's answer, submitted May 27, 1952; In No. 14,142-HW: For (1) further proceedings re motion of defendants, filed May 20, 1952, for continuance of hearing on Order to Show Cause to June 16, 1952, submitted May 27, 1952; (2) hearing application of defendants, filed May 26, 1952, for three-judge court; (3) further hearing motion of plaintiff, pursuant to Order to Show

Cause filed May 15, 1952, and complaint filed May 14, 1952, for preliminary injunction;

(Same order in each case:) Court denies motion of defendants in Case No. 14,142-HW for continuance, heretofore submitted. On application of attorneys for Gov't,

Court orders Exhibits 1 to 6 incl. to complaint in Case No. 14,142-HW received in evidence by reference in Cases No. 14,141-HW and No. 14,142-HW.

Pursuant to stipulation, Court orders entire record in Case No. 595,892 Superior Court received in evidence by reference in Cases No. 14,141-HW and No. 14,142-HW.

Gov't (Petitioner in Case 14,141-HW, and plaintiff in Case No. 14,142-HW) rests in both cases.

Respondent Union in Case No. 14,141-HW rests.

Attorney Gould states that defendant in Case No. 14,142-HW does not rest, and objects to proceeding in Case No. 14,142-HW.

Counsel argue. At 12:05 PM court recesses to 2 PM.

At 2 PM court reconvenes herein. Counsel argue further.

Court finds that a labor dispute exists affecting interstate commerce within the purview of the Taft-Hartley Act and that the Labor Board had reasonable grounds to assume there were unfair labor practices, and orders injunction issue in Case No. 14,141-HW.

Court denies motion for three-judge court in Case No. 14,142-HW.

Court grants restraining order against defendants in Case No. 14,142-HW from using temporary restraining order they have received in the State Court in Case No. 595,892. Court directs attorneys for Gov't to prepare findings, conclusions, and injunction in Case No. 14,141-HW and findings, conclusions, and preliminary injunction in Case No. 14,142-HW, and orders both causes continued to June 2, 1952, 2 PM, for settling forms of orders.

Attorney Gould moves for stay of execution and said motion is ordered continued to June 2, 1952, for hearing.

Edmund L. Smith, Clerk, By E. M. Enstrom, Jr.,
Deputy Clerk.

[fols. 172-176] IN UNITED STATES DISTRICT COURT

No. 14,142-HW Civil

NATIONAL LABOR RELATIONS BOARD, Plaintiff

VS

CAPITAL SERVICE, INC., a corp., et al., Defendants.

MINUTES OF THE COURT Date: June 2, 1952

At: Los Angeles, California.

Present The Honorable Harry C. Westover, District Judge; Deputy Clerk: E. M. Enstrom, Jr.; Reporter: S. J. Trainor; Counsel for Plaintiff: Charles K. Hackler, Chief law Officer; Counsel for Defendant: Carl M. Gould; Hyman Smith; Counsel for applicant: John C. Stevenson, for Bakery Drivers Local Union No. 276, applicant to appear amicus curiae.

Proceedings: 1. Hearing to settle findings of fact, conclusions of law and form of preliminary injunction;

2. Setting for trial;

3. Motion of defendants for stay of execution.

Plaintiff's proposed findings of fact and conclusions of law, and preliminary injunction are lodged.

Defendants' objections to proposed findings of fact and conclusions of law are filed.

Defendants' application for arrest of judgment and memorandum in support is filed.

Defendants' memorandum in support of application for order staying proceedings pending appeal and points and authorities in support are filed.

The Court overrules all objections and signs findings, conclusions and judgment as proposed and orders the same filed and entered.

The Court orders motions of the defendants for stay of execution and application for arrest of judgment stand submitted.

The Court continues the cause to June 9, 1952, 10 AM. for setting for further proceedings.

The Defendants' notice of appeal from preliminary injunction is lodged.

The Defendants' *precipae* for transfer of record is lodged.

Edmund L. Smith, Clerk, By E. M. Enstrom, Jr.,
Deputy Clerk.

[fol. 177]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 14142 HW

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed
June 2, 1952

This cause came on to be heard on the complaint of the National Labor Relations Board, pursuant to Sections 1337 and 1661 of the Judicial Code, for a permanent injunction against Capital Service, Inc., and G. Brashears, its president, and upon the return of an order to show cause why a preliminary injunction should not issue as prayed pending final determination of the complaint. All parties were afforded full opportunity to be heard, present relevant testimony bearing on the issues, and to argue on the law and the evidence. The Court, after fully considering the pleadings, relevant testimony, briefs, and arguments of counsel, upon the entire record makes the following:

[fol. 178]

I. Findings of Fact

1. Plaintiff, herein called the Board, is an agency of the United States created pursuant to the National Labor Relations Act, as amended (29 U.S.C. Supp. IV, Sec. 141 *et seq.*; hereafter called "the Act"). The Act vests the Board with exclusive primary jurisdiction to determine whether certain concerted activities by labor organiza-

tions, which affect commerce as defined in Sections 2(6) and (7) of the Act, constitute unfair labor practices within the meaning of Section 8 of the Act, or conduct permitted and guaranteed by Section 7 of the Act. The Act also vests the Board with exclusive primary jurisdiction to redress such of these activities as constitute unfair labor practices, to safeguard those which are guaranteed by Section 7, and to protect against infringement the policies of Congress embodied in said Act.

2. Defendant Capital Service, Inc. (hereafter called "Capital"), is a California corporation engaged in the manufacture and distribution of bakery products in and around Los Angeles, California. During 1951, it purchased raw materials valued in excess of \$500,000, approximately \$30,000 of which was received directly from points outside the State of California, and approximately \$175,000 of which was received indirectly from outside said State.

Defendant G. Brashears is president of Capital.

3. Thriftmart and Boys Valley Market No. 4 are retail food markets located in Los Angeles, California, which sell the bakery products of Capital. In 1951, Thriftmart received merchandise, which originated from sources outside the State of California, valued at approximately \$300,000. In 1951, Boys Valley Market No. 4 received, direct from outside the State of California, merchandise valued at approximately \$800,000, and it received, indirectly from outside of California, additional merchandise valued at approximately \$1,000,000.

[fol. 179] Valley Stores No. 1 and No. 2 are retail food stores located in North Hollywood, California, which also sell the bakery products of Capital. In 1951, Valley Stores No. 1 and No. 2 received merchandise, which originated from sources outside the State of California, valued at approximately \$250,000.

4. Early in February 1952, in furtherance of a labor dispute with Capital, Bakery Drivers Local Union No. 276, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, (hereinafter called "the Union") established peaceful picket lines at various retail stores selling Capital's bakery products,

including those stores specified in paragraph "3". The Pickets carried placards which read as follows:

To the Public
Danish Maid
Bakery Products
Sold Here Are Made
and Delivered by
a Bakery That Is
Non-Union
and on the
We Do Not Patronize List
of the
Los Angeles Central Labor Council
Los Angeles Food Council
Joint Council of Teamsters' Union 42
Bakery Drivers' Local 276
Bakers' Local Number 37

5. Capital filed an unfair labor practice charge with the Regional Director of the Board for the Twenty-First Region, alleging that this picketing constituted unfair labor practices affecting commerce, within the meaning of Section [fol. 180] 8(b) (4)(A) of the Act. The Regional Director, upon investigation of the charge, found reasonable cause to believe that acts violative of Section 8(b)(4)(A) had occurred in the course of said picketing. The Regional Director accordingly petitioned this Court for a preliminary injunction against the Union, as required by Section 10 (1) of the Act, and also issued an unfair labor practice complaint pursuant to Section 10(b) of said Act.

6. This Court, after hearing the evidence, has concluded that there were in fact reasonable grounds for believing that the picketing resulted in acts violative of Section 8(b) (4)(A) of the Act, and that the issuance of a preliminary injunction against the Union prohibiting the illegal conduct pending final adjudication by the Board was proper. *LeBaron v. Bakery Drivers Local Union No. 276*, etc., No. 14141-HW.

7. About when the unfair labor practice charge specified in paragraph "5" was filed, Capital also instituted an action in the Superior Court of California, Los Angeles

County, which, *inter alia*, sought injunctive relief against the very picketing which formed the basis for the Board charge. *Capital Service, Inc., etc., v. Bakery Drivers' Local Union Number 276*, et al., No. 595892. While the Regional Director, as specified in paragraph "5" was completing his preliminary investigation of Capital's charge, the Superior Court issued a preliminary injunction in Case No. 595892.

8. The Superior Court preliminary injunction, as shown by that Court's memorandum opinion, is predicated solely on the ground that the peaceful picketing specified in paragraph "4" was contrary to the public policy of the State of California, as declared by said Superior Court. The Superior Court injunction restrains the Union, who is the respondent in the Board and Federal Court proceedings referred to in paragraphs "5" and "6", as well as certain other labor organizations, from engaging in any picketing at the retail stores handling Capital's products.

[fol.181] 9. The conduct enjoined by the Superior Court injunction is the same conduct which forms the basis for the unfair labor practice charge referred to in paragraph "5", and which the Board, under the provisions of the Act, must evaluate and adjudicate in appropriate proceedings.

II. Conclusions of Law

1. This Court has jurisdiction of this action pursuant to Sections 1337 and 1651 of the Judicial Code.

2. The Union's labor dispute with Capital and the peaceful concerted activity which it has engaged in in furtherance thereof affects commerce within the meaning of Sections 2 (6) and (7) of the National Labor Relations Act, as amended.

3. There is reasonable cause to believe that said concerted activity has resulted in conduct which constitutes unfair labor practices within the meaning of Section 8(b)(4)(A) of the Act.

4. The Act vests the National Labor Relations Board, and this Court (to the extent specified in Section 10 (1) of the Act), with exclusive primary jurisdiction to determine how much of this concerted activity shall be prohibited by injunction.

5. Said concerted activities are in the field covered by the Act, and are therefore preempted and closed to State regulation.

6. The Superior Court was thus without jurisdiction to restrain said concerted activities, and its action in so doing invades and infringes the exclusive federal field which the Act preempts, and infringes upon the exclusive jurisdiction of the Board and of this Court.

7. A preliminary injunction as prayed, pending final determination of the complaint, is necessary and proper to avoid further irreparable impairment of the Congressional objective of a uniform national labor policy in industries affecting commerce, to protect the exclusive jurisdiction of the Board under the Act, and to effectuate the [fol. 182] decree of this Court entered simultaneously herewith in Case No. 14141-HW.

8. Section 2283 of the Judicial Code does not bar the issuance of said preliminary injunction, for it has no application where, as here, an exclusive Federal jurisdiction is vindicated.

Done at Los Angeles, California, this 2nd day of June, 1952.

Harry C. Westover, United States District Judge.
Presented by:

Charles K. Hackler, Attorney for Petitioner.

Received 2 copies of above 5/31/52.

Hyman Smith, Att. for ———.

Received June 2, Atty. for Intervenor.

[fol. 183] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 14142 HW

PRELIMINARY INJUNCTION—June 2, 1952

This case came on to be heard on the complaint of the National Labor Relations Board for a permanent injunction against Capital Service Inc., and G. Brashears, its

president, and upon the return of an order to show cause why a preliminary injunction should not issue as prayed, pending final determination of the complaint. All parties were afforded full opportunity to be heard, to present relevant evidence bearing on the issues, and to argue on the law and the evidence. The Court has fully considered the pleadings, relevant testimony, briefs, and arguments of counsel, and has made Findings of Fact and Conclusions of Law. Now, therefore, upon the entire record, it is [fols. 184-210] Ordered, adjudged and decreed that defendants Capital Service, Inc. and G. Brashears, individually and as president of Capital Service, Inc., and their agents, servants, employees, attorneys and all persons in active concert or participation with them, be and they hereby are enjoined and restrained, pending the final determination of the complaint herein, from

Enforcing or seeking to enforce, or in any other manner giving continued effect to or availing themselves of the benefits of, the preliminary injunction issued on April 7, 1952, by the Superior Court of California, Los Angeles County, in Case No. 595892; and from taking or applying for any further proceedings in said Superior Court the effect of which would be to enjoin or restrain the defendant labor organization in Superior Court Case No. 595892 from engaging in peaceful picketing or other concerted activities affecting the customers of Capital Service, Inc., and their suppliers, and which are carried on pursuant to a labor dispute with Capital Service, Inc.

Done at Los Angeles, California, this 2nd day of June, 1952.

Harry C. Westover, United States District Judge.

Presented by:

Charles K. Hackler, Attorney for Petitioner.

Received 2 copies of above 5/31/52.

Hyman Smith, Atty. for Dfts.

Received June 2, 1952, John C. Stevenson, Attorney for Intervenor.

[fol. 211]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action File No. 14142-HW

NOTICE OF APPEAL TO UNITED STATES CIRCUIT COURT OF APPEALS BY DEFENDANTS—Filed June 3, 1952

Notice is hereby given that Capital Service, Inc., a California corporation, and G. Brashears, individually and as president of said corporation, the defendants in the above entitled cause, and each of them, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment, order and decree entered in said cause in the above entitled court on June 2, 1952, granting a preliminary injunction in the above entitled cause, and said defendants appeal from said preliminary injunction, and from the whole thereof.

Dated: June 2, 1952.

Hill, Farrel & Burrill and Hyman Smith. By Carl M. Gould, Attorneys for defendants and appellants.

[fols. 212-216]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action File No. 14142-HW

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed June 3, 1952

To the Clerk of the above entitled court:

You are hereby requested and directed to prepare a transcript of the complete record and all proceedings in the above entitled cause and certify the same to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, pursuant to the appeal of the defendants, Capital Service, Inc., a corpora-

tion, and G. Brashears, individually and as president of said corporation, in said cause, said transcript to be prepared in accordance with law and any rules of court applicable thereto.

Hill, Farrer & Burrill and Hyman Smith. By Carl M. Gould, Attorneys for Defendants.

[fol. 217] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 14,142-HW Civil

MINUTES OF THE COURT Date: June 4, 1952,

At: Los Angeles, California.

Present: The Honorable Harry C. Westover, District Judge; Deputy Clerk: E. M. Enstrom, Jr., Reporter: Samuel Goldstein; Counsel for Plaintiff: no appearance; Counsel for Defendant: no appearance.

Proceedings: It is ordered that (1) motion of defendants (oral 5/29/52) for stay of execution and (2) application of defendants, filed June 2, 1952, for arrest of judgment, heretofore submitted, and having been duly considered, are hereby denied.

Edmund L. Smith, Clerk, By E. M. Enstrom, Jr., Deputy Clerk.

[fols. 218-220] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 14142-HW-Civil

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 218, inclusive, contain the original Complaint for Injunctive Relief; Points and Authorities in Support of Plaintiff's Prayer for a Preliminary Injunction; Order to Show Cause; Motion of Defendants for Continuance of Hearing on Order

to Show Cause; Affidavit of Carl M. Gould for Order Shortening Time; Preliminary Points and Authorities in Opposition to Prayer for Preliminary Injunction; Supplementary Memorandum in Support of Plaintiff's Prayer for a Preliminary Injunction; Application for Three Judge Court; Points and Authorities in Support of Application for Three Judge Court; Memorandum of Plaintiff on the Question of Whether the Union Activity Involved Herein Affects Commerce Within the Meaning of the National Labor Relations Act, as Amended; Points and Authorities (No. 2) in Opposition to Preliminary Injunction; Defendants' Objections to Proposed Findings of Fact and Conclusions of Law; Findings of Fact and Conclusions of Law; Preliminary Injunction; Application for Arrest of Judgment and Memorandum in Support Thereof; Points and Authorities in Support of Application for a Stay; Memorandum in Support of Plaintiff's Application for an Order Staying Proceedings Pending Appeal; Notice of Appeal; Praecipe for Transcript of Record; Undertaking for Costs on Appeal; and Designation of Record on Appeal and a full, true and correct copy of Minutes of the Court for May 21, 26, 27, 28 and 29 and June 2 and 4, 1952 which, together with copy of the Reporter's Transcript constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$4.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 4th day of June A. D. 1952.

Edmund L. Smith, Clerk, By Theodore Hocke, Chief Deputy.

[fol. 221]

PETITIONER'S EXHIBIT I

Ross R. McBurney, 740 N. Niagara Street, Burbank, California. Charleston 67933.

I, Ross R. McBurney after being first, duly sworn, under oath, depose and say:

That I am employed by the Webber Baking Company as a Salesdriver. I regularly make delivery to Valley Markets No. 1 and 2 both on Moorpark Street, North Hollywood.

On Feb. 11, 1952 at about 9:10 A.M. I and my route supervisor Rocca Gerardi drove into the alley in back of Market No. 1. We saw two or three men who I knew to be union business agents. I know that Bakery Drivers Local 276 was having trouble with Danish maid so I had a pretty good idea what the union officials were doing at the market.

I got out of my truck and started to talk to Chet Leonard Business agent for Local 276. Leonard told me that I had better go make some of my other deliveries and come back later. He said I think that we will have everything fixed up by the time that you get back.

We left without making the delivery. We went directly to Valley Market No. 2 intending to make a delivery if there was no pickets there. As we drove up we saw 2 or three men outside the market they were not carrying picket signs but we had a good idea who they were.

[fols. 222-223] The men walked up to the truck as soon as the truck stopped. They told us that we had better go and make some other deliveries and come back later. They said that they were waiting for a phone call from Chet Leonard and Henry Becker business agents for Local 276. They said that they thought the trouble would be settled by the time that we got back.

We left made some other deliveries and returned to Market No. 1 about 10:30 AM there was no picket at the Market so we made the delivery. We then went to Market No. 2. There was no pickets so we made the delivery at that market.

The union did not use force or threaten us to keep us from crossing the picket line.

I have read the statements contained in two pages of this affidavit and swear that they are true.

ROSS R. MCBURNEY.

Sworn to before me this 12th day of March 1952 at Los Angeles, California.

P. J. Driscoll, N.L.R.B. agent.

Note: The union officials were not displaying picket signs at either of the markets.

[fol. 224] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil No. 14141 PH

HOWARD F. LeBARON, Regional Director of the Twenty-first Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, Petitioner,

v.

BAKERY DRIVERS LOCAL UNION No. 276, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, Respondent

PETITION FOR AN INJUNCTION UNDER SECTION 10 (1) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED—Filed May 14, 1952.

To the Honorable Judges of the United States District Court for the Southern District of California, Central Division:

Comes now Howard F. LeBaron, Regional Director of the Twenty-first Region of the National Labor Relations Board (herein called the Board), and petitions this Court on behalf of the Board, pursuant to Section 10(1) of the National Labor Relations Act, as amended June 23, 1947 (61 Stat. 136 *et seq.* 29 U.S.C. Supp. IV, Sec. 141 *et seq.*; herein called the Act), for appropriate injunctive relief pending the final adjudication of the Board with respect to the matters pending before the Board on charges alleging that respondent has engaged in and is engaging in conduct in violation of Section 8 (b), subsection (4)(A) of [fol. 225] the Act. In support thereof petitioner respectfully shows as follows:

1. Petitioner is Regional Director of the Twenty-first Region of the Board, an agency of the United States, and files this petition for and on behalf of the Board.

2. Respondent Bakery Drivers Local Union No. 276, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, an unincorporated

association, is a labor organization within the meaning of Sections 2 (5), 8 (b) and 10 (1) of the Act, and is engaged within this judicial district in promoting and protecting the interests of its employee members and in transacting business.

3. Jurisdiction of this proceeding is conferred upon the Court by Section 10 (1) of the Act.

4. On or about February 21, 1952, Capital Service, Inc. (herein called Capital), pursuant to the provisions of the Act, filed a charge with the Board alleging that respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b), subsection (4), (A), of the Act. A copy of said charge is attached hereto as Exhibit 1 and made a part hereof.

5. The said charge was referred to your petitioner as the Regional Director for the Twenty-first Region of the Board for investigation. Petitioner has investigated the aforesaid charge.

6. After such investigation, petitioner has reasonable cause to believe that the allegations of said charge are true and that a complaint of the Board based thereon should issue against the respondent pursuant to Section 10 (b) thereof. More particularly, and upon the basis of such investigation and of the evidence disclosed as a result thereof, petitioner has reasonable cause to believe, and believes, that respondent has engaged in and is engaging in conduct in violation of Section 8 (b), subsection (4) (A) of the Act, and affecting commerce within the meaning of Section 2, subsections (6) and (7) of the Act, as follows:

(a) Capital is engaged in the manufacture and distribution of bakery products in Los Angeles, California. During [fol. 226] 1951 it purchased raw materials valued in excess of \$500,000, of which raw materials of the value of approximately \$30,000 were received directly from outside the State of California and of the value of approximately \$175,000 were received indirectly from outside the State of California.

(b) Thriftmart, a retail food market located in Los Angeles, is a customer of Capital. In 1951, Thriftmart received merchandise valued at approximately \$300,000 di-

rectly and indirectly from sources outside the State of California.

(c) Boys Valley Market No. 4, a retail food market located in Los Angeles, California, is another customer of Capital. During 1951, Boys Valley Market No. 4 received merchandise valued at approximately \$800,000 directly from sources outside the State of California, and received merchandise valued at approximately \$1,000,000 indirectly from outside the State of California.

(d) Valley Stores No. 1 and No. 2 are other customers of Capital located in North Hollywood, California. During 1951, Valley Stores No. 1 and No. 2 received merchandise valued at approximately \$250,000 indirectly from outside the State of California.

(e) Weber Baking Co. is engaged at Glendale, California, in the manufacture and distribution of bakery products. Among others, it supplies bakery products to Valley Stores No. 1 and No. 2 and Boys Valley Market No. 4, which are also customers of Capital.

(f) Pellissier Dairy is engaged at Los Angeles, California, in the manufacture and distribution of dairy products. Among others, it supplies dairy products to Thriftmart, which is also a customer of Capital.

(g) Folger's Coffee is engaged at Los Angeles, California, in the distribution of coffee. Among others, it supplies coffee to Thriftmart, which is also a customer of Capital.

(h) Since on or about February 7, 1952, respondent has engaged in, and by picketing, orders, instructions, directions, appeals, and other means, has induced and encouraged employees of customers of Capital and their suppliers, including Thriftmart, Boys Valley Market No. 4, Valley [fol. 227] Stores No. 1 and No. 2, Weber Baking Co., Folger's Coffee, and Pellissier Dairy, to engage in strikes or concerted refusals in the course of their employment to use, manufacture, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform services, an object thereof being to force or require the said customers of Capital to cease using, selling, handling, transporting or otherwise dealing in the products of Capital or to cease doing business with Capital.

7. Upon information and belief, it may be fairly anticipated that respondent will continue and repeat its conduct hereinabove set forth, and will continue to engage in, and to induce and encourage the employees of customers of Capital and their suppliers to engage in, strikes or concerted refusals in the course of their employment to use, manufacture, process, or otherwise handle or work on any goods, articles, materials or commodities or to perform services for their respective employers, an object thereof being to force or require said customers of Capital to cease using, selling, handling, transporting or otherwise dealing in the products of Capital, or to cease doing business with Capital. It is therefore essential, appropriate, just and proper, for the purposes of effectuating the policies of the Act, and in accordance with the provisions of Section 10(1) thereof, that, pending the final adjudication of the Board with respect to the matters herein involved, respondent be enjoined and restrained from the commission of the acts above alleged, similar acts, or repetitions thereof.

Wherefore, petitioner prays:

(1) That the Court issue an order directing respondent to appear and show cause before this Court, at a time and place to be set by the Court, why an injunction should not issue enjoining and restraining respondent, its agents, servants, employees, attorneys and all other persons in active concert or participation with it, pending final adjudication by the Board of such matters, from:

Engaging in, or, by picketing, orders, instructions, directions, or appeals, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, inducing or encouraging the employees of customers of Capital and their suppliers including Thriftmart, Boys Valley Market No. 4, Valley Stores No. 1 and No. 2, Weber Banking Co., Folger's Coffee, and Pellissier Dairy, or any other employer, to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force or require said customers of Capital or any other em-

ployer, to cease using, selling, handling, transporting or otherwise dealing in the products of Capital or to cease doing business with Capital.

(2) That, upon return of said order to show cause, the Court issue an order enjoining and restraining respondent in the manner set forth above.

(3) That the Court grant such other and further relief as may be just and proper.

Dated at Los Angeles, California, this 14th day of May, 1952.

Howard F. LeBaron, Regional Director, Twenty-first Region, National Labor Relations Board, 111 West Seventh Street, Los Angeles 14, California.

George J. Bott, General Counsel; David P. Findling, Associate General Counsel; Winthrop A. Johns, Assistant General Counsel; Charles K. Hackler, Chief Law Officer, Twenty-first Region; James V. Constantine, Attorney, National Labor Relations Board, 111 West Seventh Street, Los Angeles 14, California.

[fols. 229-248] *Duly sworn to by Howard F. LeBaron. Jurat omitted in printing.*

[fol. 249] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil No. 14141 HW

[Title omitted]

ANSWER TO PETITION FOR INJUNCTION—Filed May 20, 1952

Comes now the Respondent, Bakery Drivers Local Union No. 276, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L.,

and in answer to the petition on file herein admits, denies and alleges as follows:

I.

Answering paragraph 6, this answering Respondent denies that it has engaged in or is engaging in conduct in violation of Section 8 (b), subsection (4) (A) of the Act, and further denies that Petitioner has reasonable cause to believe that the allegations of said charge are true. Respondent further denies generally and specifically each and every allegation contained in subsection (h).

[fol. 250]

II.

Answering paragraph 7, Respondent denies generally and specifically each and every allegation and statement therein contained.

Wherefore, Respondent prays that the Court deny the application for a temporary injunction and vacate and discharge the order to show cause heretofore issued.

John C. Stevenson & Lionel Richman, by Lionel Richman, Attorneys for Respondent.

[fol. 251-262] *Duly sworn to by Charles A. Bolton, Jurat omitted in printing.*

Affidavit of Service By Mail—(omitted in printing)

[fol. 263]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Civil No. 14141 HW

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed
June 2, 1952

This cause came on to be heard on the verified petition of Howard F. LeBaron, Regional Director of the Twenty-First Region of the National Labor Relations Board, on

behalf of said Board, under Section 10 (1) of the National Labor Relations Act (herein called the Act) for an injunction pending final adjudication by the Board of the matters involved, and upon the return of an order to show cause why an injunction as prayed should not be issued. All parties were afforded full opportunity to be heard, present relevant testimony bearing on the issues, and to argue on the law and the evidence. The Court, after fully considering the pleadings, relevant testimony, briefs, and [fol. 264] arguments of counsel, upon the entire record makes the following:

I. Findings of Fact

1. Petitioner is the Regional Director of the Twenty-First Region of the National Labor Relations Board (herein called the Board).

2. Respondent Bakery Drivers Local Union No. 276, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL (herein called Local No. 276), an unincorporated association, is a labor organization within the meaning of Sections 2(5), 8(b) and 10(1) of the Act, has its office in Los Angeles, California, within this judicial district, and is engaged and at all times herein mentioned has been engaged within this judicial district in promoting and protecting the interests of its employee members and in transacting business.

3. On or about February 21, 1952, Capital Service, Inc. (herein called Capital), pursuant to the provisions of Section 10(b) of the Act, filed a charge with the Board alleging that respondent Local No. 276 has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b), subsection (4)(A) of the Act, and affecting commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

4. The said charge was duly referred to petitioner for investigation. An investigation of the charge was conducted by petitioner.

5. Petitioner has, and there is, reasonable cause to believe that said charge and the material allegations of the petition are true. More particularly, petitioner has, and there is, reasonable cause to believe that:

(a) Capital is engaged in the manufacture and distribution of bakery products in Los Angeles, California. During 1951 it purchased raw materials valued in excess of [fol. 265] \$500,000, of which raw materials of the value of approximately \$30,000 were received directly from outside of the State of California and of the value of approximately \$175,000 were received indirectly from outside the State of California.

(b) Thriftmart, a retail food market located in Los Angeles, is a customer of Capital. In 1951, Thriftmart received merchandise valued at approximately \$300,000 directly and indirectly from sources outside the State of California.

(c) Boys Valley Market No. 4, a retail food market located in Los Angeles, California, is another customer of Capital. During 1951, Boys Valley Market No. 4, received merchandise valued at approximately \$800,000 directly from sources outside the State of California, and received merchandise valued at approximately \$1,000,000 indirectly from outside the State of California.

(d) Valley Stores No. 1 and No. 2 are other customers of Capital located in North Hollywood, California. During 1951, Valley Stores No. 1 and No. 2 received merchandise valued at approximately \$250,000 indirectly from outside the State of California.

(e) Weber Baking Co. is engaged at Glendale, California, in the manufacture and distribution of bakery products. Among others, it supplies bakery products to Valley Stores No. 1 and No. 2 and Boys Valley Market No. 4, which are also customers of Capital.

(f) Pellissier Dairy is engaged at Los Angeles, California, in the manufacture and distribution of dairy products. Among others, it supplies dairy products to Thriftmart, which is also a customer of Capital.

(g) Folger's Coffee is engaged at Los Angeles, California, in the distribution of coffee. Among others, it supplies coffee to Thriftmart, which is also a customer of Capital.

(h) Respondent Local No. 276 is engaged in a labor dispute with Capital.

[fol. 266] (i) Since on or about February 7, 1952, re-

spondent has, by picketing of employees or delivery entrances, orders, instructions, directions, appeals, and other means, induced and encouraged employees of customers of Capital and their suppliers, including Thriftmart, Boys Valley Market No. 4, Valley Stores No. 1 and No. 2, Weber Baking Co., Folger's Coffee, and Pellissier Dairy, to engage in strikes or concerted refusals in the course of their employment to use, manufacture, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform services, an object thereof being to force or require the said customers of Capital to cease using, selling handling, transporting or otherwise dealing in the products of Capital or to cease doing business with Capital.

(j) The acts and conduct of respondent set forth in paragraph 6 (i) above, constitute unfair labor practices within the meaning of Section 8(b), subsection (4)(A) of the Act.

(k) The acts and conduct of respondent Local No. 276 as set forth, occurring in connection with the operations of Capital and its customers, Thriftmart, Boys Valley Market No. 4 and Valley Stores No. 1 and No. 2, affect and have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

6. It may reasonably be anticipated that, unless restrained, respondent Local No. 276 will engage in and continue the same, or similar or like, conduct with respect to the employees of customers of Capital and their suppliers, and other employers, an object thereof being to force or require the customers of Capital or any other employer to cease using, selling, handling, transporting, or otherwise dealing in the products of Capital or to cease doing business with Capital. Thereby respondent Local No. 276 will continue to violate Section 8(b), subsection (4)(A) of the Act, [fol. 267] and cause irreparable injury to the policies of the Act and the public welfare before the Board can finally adjudicate the matters involved.

II. Conclusions of Law

1. Capital and its customers, Thriftmart, Boys Valley Market No. 4, and Valley Stores No. 1 and No. 2, are engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

2. Respondent Local No. 276 is a labor organization within the meaning of Section 2(5) of the Act.

3. This Court has jurisdiction of the proceedings and of respondent Local No. 276, and to grant relief under Section 10(1) of the Act.

4. Petitioner has, and there is, reasonable cause to believe that respondent Local No. 276 has engaged in unfair labor practices within the meaning of Section 8(b), subsection (4)(A) of the Act, and affecting commerce within the meaning of Section 2, subsections (6) and (7) of the Act, and will continue to engage in such unfair labor practices.

5. To present irreparable injury to the policies of the Act, and to the public welfare, and for the purpose of effectuating the policies of the Act, it is essential, just, proper, and appropriate that, pending the final adjudication by the Board of the matters involved herein respondent Local No. 276, and its agents, servants, employees, attorneys, and all persons in active concert or participation with it, be enjoined and restrained from the commission and continuation of the acts and conduct set forth above, acts in furtherance and support thereof, and like or related acts or conduct, and from permitting any such to remain in effect, whose commission in the future is likely or may be fairly anticipated.

[fol. 268] Done at Los Angeles, California, this 2nd day of June, 1952.

Harry C. Westover, United States District Judge.

Presented By: Charles K. Hackler, Attorney for Petitioner.

Received 2 copies of above 5/31/52, Hyman Smith, Atty. for Intervenor.

Reed., John C. Stevenson, Atty. for Def.

[fol. 269]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Civil No. 14141 HW

PRELIMINARY INJUNCTION—Filed June 2, 1952

This cause came on to be heard on the verified petition of Howard F. LeBaron, the Regional Director of the Twenty-First Region of the National Labor Relations Board, on behalf of said Board, for an injunction pending final adjudication by the Board of the matter involved, and upon the return of an order to show cause why an injunction as prayed should not be issued. All parties were afforded full opportunity to be heard, to present relevant evidence bearing on the issues, and to argue on the law and the evidence. The Court has fully considered the pleadings, relevant testimony, briefs, and arguments of counsel, and has made Findings of Fact and Conclusions of Law. Now, therefore, upon the entire record, it is

Ordered, adjudged, and decreed that respondent Bakery [fol. 270] Drivers Local Union No. 276, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its agents, servants, employees, attorneys, and all persons in active concert or participation with it, be and they hereby are enjoined and restrained, pending the final adjudication by the National Labor Relations Board of the matters involved, from

Inducing or encouraging—by orders, directions, instructions, appeals, picketing or any like or related acts or conduct—the employees of customers of Capital Service, Inc., the employees of suppliers of said customers, or the employees of any other employer, to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require any customer of Capital Service, Inc., or any other employer, to cease using, selling, handling, trans-

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porting or otherwise dealing in the products of Capital Service, Inc., or to cease doing business with Capital Service, Inc.

Done at Los Angeles, California, this 2nd day of June, 1952.

Harry C. Westover, United States District Judge.

Presented By: Charles K. Hackler, Attorney for Petitioner.

Received 2 copies of above 5/31/52, Hyman Smith, Atty. for Intervenor.

Recd. June 2, John C. Stevenson, Atty. for Def.

[fols. 270a-323] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 14142-HW

CERTIFICATE OF CLERK TO SUPPLEMENTAL TRANSCRIPT OF
RECORD

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 219 to 270, inclusive, contain the original Order for Supplemental Transcript of Record and Petitioner's Exhibit 1 and a full, true and correct copy of Minutes of the Court for June 4, 1952 in the above entitled cause and the original Petition for an Injunction Under Section 10(1) of the National Labor Relations Act, as Amended; Motion of Capital Service Inc. etc to Intervene as a Respondent; Petitioner's Opposition to Motion to Intervene; Answer to Petition for Injunction; Intervenor's Answer; Petitioner's Motion to Strike Parts of Intervenor's Answer; Findings of Fact and Conclusions of Law and Preliminary Injunction in the case of Howard F. LeBaron etc., v. Bakery Drivers Local Union No. 276, etc, No. 14141-HW which together with copy of the reporter's transcript of proceedings on June 2, 1952 in case No. 14142-HW, constitute the supplemental transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 25 day of June, A.D. 1952.

Edmund L. Smith, Clerk. By Theodore Hocke, Chief Deputy. (Seal.)

[fol. 324]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF LOS ANGELES

No. 595 892

CAPITAL SERVICE, INC., etc., Plaintiff,

vs.

BAKERY DRIVERS LOCAL UNION No. 276, etc., et al.,
Defendants.

AFFIDAVIT OF G. BRASHEARS—Filed July 10, 1952

STATE OF CALIFORNIA,

County of Los Angeles, ss:

G. Brashears, being first duly sworn, deposes and says:

1) That I am now and have been for more than four years last past, an officer of plaintiff, and that I have been at all times herein mentioned familiar with its business affairs and operations.

2) That on April 14, 1949, a representation election, by a secret ballot, was held at plaintiff's plant located at 2409 Southwest Drive, in the City of Los Angeles, State of California, for the purpose of determining whether or not all production and maintenance employees on the payroll of plaintiff on April 2, 1949, desired to be represented for the purpose of collective bargaining by Bakery and Confectionery Workers, International Union of America, Local Union Number 37, A.F. of L. (hereinafter for convenience referred to as "Bakery Workers Union").

3) That said election was held pursuant to a petition [fol. 325] duly filed with the National Labor Relations Board by the Bakery Workers Union under Section 9 of

the National Labor Relations Act as amended, and an agreement for consent election entered into between plaintiff and the Bakery Workers Union.

4) That said election was held under the supervision of the Regional Director for the National Labor Relations Board.

5) That the holding of the election followed activities of the Bakery Workers Union to obtain members from plaintiff's production and maintenance employees.

6) That a total of 69 employees of plaintiff were eligible to vote at said election and a total of 68 employees did vote at said election; that 15 employees voted in favor of being represented by the Bakery Workers Union and 52 employees voted against being represented by the Bakery Workers Union; the vote of one employee was voided; therefore, of a total of 67 valid votes 52 employees voted against being represented by the Bakery Workers Union and 15 employees voted in favor of being represented by the Bakery Workers Union.

7) That following the results of the election the Regional Director for the National Labor Relations Board, on April 21, 1949, certified that the Bakery Workers Union was not the exclusive representative of all the production and maintenance employees of plaintiff; that attached hereto, marked Exhibit "A" and made a part hereof is a true and correct copy of the "Certificate of Results of Election" of said election.

8) That at the present time plaintiff employs 49 full time production and maintenance employees and 3 truck drivers. The affidavits of 38 of said production and maintenance employees and one truck driver employee, the latter being Chas. T. Himmelspach, are filed herewith. The affidavits of the two other truck driver employees, O. L. Spann and James E. Bird, have previously been filed herein.

[fol. 326] 9) That on or about August 22, 1949, plaintiff received a letter dated August 22, 1949, from Los Angeles Central Labor Council, a true and correct copy of which said letter is attached hereto, marked Exhibit "B" and made a part hereof; that attached hereto, marked Exhibit "C" and made a part hereof, is a true and correct copy of plaintiff's answer dated August 23, 1949, which was mailed

on or about said date in reply to the said letter from the Los Angeles Central Labor Council.

10) That at no time subsequent to April, 1949, to the time of filing the above entitled action did any representatives of any labor unions contact me for the purpose of negotiating a collective bargaining agreement for any of plaintiff's employees, the single exception being referred to in paragraph 9 above.

11) That to the best of my knowledge and belief, at no time subsequent to April, 1949, to the time of filing the above entitled action did any representatives of any labor unions contact any other executive of plaintiff for the purpose of negotiating a collective bargaining agreement for any of plaintiff's employees, the single exception being referred in paragraph 9 above.

12) That to the best of my knowledge and belief, at no time subsequent to April, 1949, to the time of filing the above entitled action did any of the defendant labor unions carry on any campaign to organize any of plaintiff's employees.

13) That I was informed that during the months of August through November, 1949, the Bakery Drivers Union Local 276 had held some meetings with certain of plaintiff's franchise route dealers who are not plaintiff's employees but are plaintiff's customers. Subsequent to November, 1949, I heard nothing more of such meetings.

14) That on February 21, 1952, at about 9:00 o'clock A. M. of said day, which date is subsequent to the filing of the above entitled action, plaintiff received in the mail a letter dated February 20, 1952, from International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Affiliated with the American Federation of Labor, Bakery Drivers Local Union 276; that a true and correct copy of said letter is attached hereto marked Exhibit "D" and made a part hereof.

15) That the Mr. Woods referred to in said Exhibit "D" attached hereto has not been in the employ of plaintiff since on or about May 15, 1948.

16) That I have had several conversations with Harry Caplan, defendant in the above entitled action. Harry Caplan is the general manager of two markets owned by him as sole proprietor, and also general manager of food

markets owned by Carl's Ranch Market, Inc., a corporation, and Harry Caplan, Inc., a corporation, also defendants in the above entitled action. These conversations had reference to the picketing of the food markets operated and managed by Harry Caplan and the subsequent discontinuance of packaged Danish Maid Bakery products at said food markets. The food markets owned and operated by said defendants are set forth in the complaint in the above entitled action, paragraph XIX(e), (1), (2) and (3) (pages 16 and 17).

17) One of these conversations occurred on Wednesday, February 13, 1952. In said conversation Harry Caplan stated that two representatives of the Bakery Drivers Union had called on him at his general office located at 3488 West Eighth Street, Los Angeles, California, on or about February 4, 1952. They stated that his markets would have to discontinue handling Danish Maid Bakery products. After further discussion with the two union representatives Harry Caplan stated that they said that they would be back to see him either the following day or the day after as to what he had decided to do. He also stated that they said that they might be forced to put men to walk in front of his stores carrying signs telling people that Danish Maid Bakery was unfair to organized labor.

18) Harry Caplan stated in this conversation that on [fol. 328] Thursday, February 7, 1952, there were pickets at the front and at the side driveway of his store located at 3488 West Eighth Street, Los Angeles, California, and that these pickets were carrying placards which contained in large letters the words "Non-Union."

19) That Mr. Caplan said in this conversation that various suppliers of his markets—Swift & Company, Barbara Ann Bakery, Challenge Creamery and the Golden State Milk Company, did not make deliveries to said food market on February 7, 1952, because the drivers of the trucks of said suppliers would not cross the picket line established at said food market. He further said that he talked to a driver for National Biscuit Company, which driver also refused to deliver supplies to said food market because of the picket line. He said that this driver stated that although he had been instructed by his company to deliver to said food

market, he did not so deliver, for if he did not deliver all he could lose was his job and the union would get him another, but if he delivered against the orders of the union he would be blackballed by the union.

20) That Mr. Caplan then stated that the union had stated that if he removed all Danish Maid Bakery Products from the shelves of all his markets the picket line would be removed, but just so long as he sold Danish Maid Bakery products in any of his markets the pickets would stay and block drivers of other suppliers of his markets.

21) That Harry Caplan then stated that by reason of the picket line and the non-delivery of supplies to his markets resulting from the presence of the picket line, he removed Danish Maid Bakery products from all of his food markets. He stated that he has not been troubled by pickets since that time.

22) That Harry Caplan did state that the business relationships between Danish Maid Bakery and his markets were at all times satisfactory and profitable to his markets. He stated that his markets have a need for packaged Danish Maid Bakery products and that the stopping of the supply [fol. 329] of such products was detrimental to his markets. He stated further that all of his markets have had inquiries from customers for Danish Maid Bakery products.

23) That attached hereto marked Exhibit "E" and made a part hereof is a true and correct copy of a letter which was received by a number of customer food markets of plaintiff on February 27, 1952.

G. Brashears.

Subscribed and sworn to before me this 27th day of February, 1952.

Hyman Smith, Notary Public in and for the County of Los Angeles, State of California.

[fol. 330] NLRB-767 (12-30-47)

RC-RM-RD

EXHIBIT A TO AFFIDAVIT

United States of America, National Labor Relations Board

Case No. 21-RC-790

In the Matter of CAPITAL SERVICE INC. D/B/A DANISH MAID
BAKERY and BAKERY & CONFECTIONERY WORKERS, INT'L.
UNION OF AMERICA, LOCAL UNION NO. 37, A. F. OF L.

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to the terms and provisions of the Agreement for Consent Election entered into by and between the parties in the above-entitled matter, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot as therein provided. No objections were filed to the Tally of Ballots furnished to the parties, or to the conduct of the election.

Pursuant to authority vested in the undersigned by Section 5 of the Agreement for Consent Election and by the National Labor Relations Board, it is hereby certified that a majority of the valid ballots has not been cast for (the union above named) and that (said union is not) the exclusive representative of all the employees in the unit defined in Section 11 of the Agreement for Consent Election within the meaning of Section 9(a) of the National Labor Relations Act.

Signed at Los Angeles, Calif. this 21st day of April 1949.
On behalf of

NATIONAL LABOR RELATIONS BOARD

(S.) Howard F. LeBaron, Regional Director for 21st
Region National Labor Relations Board.

[fol. 331] *Copy*

EXHIBIT "B" TO AFFIDAVIT

Affiliated with American Federation of Labor
California State Federation of Labor

LOS ANGELES CENTRAL LABOR COUNCIL

536 Maple Avenue -o- Mutual 5301
Los Angeles 13, California
Thomas Ranford, *President*
Mae Stoneman, *Vice-President*
W. J. Bassett, *Secretary-Treasurer*

August 22, 1949.

Mr. L. Rich
Danish Maid Bakery
2409 Southwest Drive
Los Angeles, California

Dear Mr. Rich:

This letter is to advise you that the Bakery Drivers Union No. 276 has notified the Los Angeles Central Labor Council that the Union and your firm are engaged in a controversy of a sufficient importance to warrant the attention and action of the Central Labor Council and its affiliated unions.

It is the policy of the Los Angeles Central Labor Council to make every attempt to settle all such matters amicably and to do everything possible to avoid the placing of a firm on the "We Do Not Patronize" list, or the necessity of proceeding with strike action.

We are, therefore, calling a meeting of representatives of your firm, the union and all other unions which would be directly or indirectly affected if this dispute is not settled. The meeting will be held at the offices of the Los Angeles Central Labor Council at 10 A. M. Thursday, August 25th, 1949.

We believe it is of the utmost importance that your firm be represented, so that the unions involved may obtain all facts and any necessary information.

Sincerely yours, (S.) W. J. Bassett, Secretary.

/d

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[fol. 332] *Copy*

EXHIBIT "D" TO AFFIDAVIT

International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers

Affiliated with the American Federation of Labor

BAKERY DRIVERS LOCAL UNION 276

Telephone DRexel 7061
846 South Union Avenue
Los Angeles 14, California

February 20, 1952.

Thomas Brashears, President
Danish Maid Baking Company
2409 Southwest Drive
Los Angeles, California

Dear Sir:

For more than two years we have endeavored to unionize Danish Maid Bakeries. We have met with Mr. Woods, who formerly managed your concern, and with Mr. Luke Rich, your production manager.

Both informed us that they would discuss the matter with you. The only reply was from Mr. Rich who said they would consider a union agreement when you modernized your plant. Aside from this statement they refused to negotiate in any manner.

We now offer to meet with you or your representatives at any time to negotiate an agreement.

For your information our contract does not provide that you or any other concern in the industry cannot deliver on Wednesday. Deliveries under our agreement are completely left to the industry except that the agreement provides that Sunday is not a working day.

We will await your answer.

Your truly, Bakery Drivers Local No. 276, (S.) Chas.
A. Bolton, Secretary and Treasurer.

CAB/f Reg/rr

[fols. 333-390]

Copy

EXHIBIT "E" TO AFFIDAVIT

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Affiliated with the American Federation of Labor Bakery Drivers Local Union 276

February 25, 1952

Telephone: DRexel 7061, 846 South Union Avenue,
Los Angeles 14, Calif.

(Name of market)

Gentlemen:

We are engaged in a labor dispute with the Danish Maid Baking Company.

We have union contracts with a majority of bakeries in the Los Angeles area.

Danish Maid is on the "We Do Not Patronize" list of the Central Labor Council and all labor people are being asked not to patronize places where their products are sold because they do not make or deliver their products with union labor or at union wages.

We do not want to cause any loss of business to your market. Accordingly before such loss occurs we feel it only fair to notify you that every market displaying Danish Maid Products will be picketed by the Teamsters Union without further notice.

The public in general and labor in particular will be asked not to buy at such stores.

We ask for your cooperation in not displaying or selling Danish Maid products as long as this labor dispute exists.

Yours very truly,

Bakery Drivers Local No. 276, (S.) Chas. A. Bolton,
Secretary and Treasurer.

CAB/f

REG/rr

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[fol. 391] IN UNITED STATES DISTRICT COURT

No. 14142-HW

[Title omitted]

Certificate of Clerk to Second Supplemental Transcript of
Record

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 271 to 390, inclusive, contain the original Amended Motion and Order to Supplement Record on Appeal and the original copies of separate affidavits of James Bird, J. R. Dahl, Bernard L. Berg, of Certain Employees Who Were in the Employ of Plaintiff in April, 1949, of Certain Employees of Plaintiff who became employees of Plaintiff. Since April, 1949, G. Brashears, No. of G. Brashears, O. L. Sporn, No. 2 of O. L. Spann, Floyd Wilson, David Dick, Harry Caplan, Luke Rich, Thomas Brashears, Hugh Clark; Plaintiff's Supplemental Memorandum of Points and Authorities; Supplemental Points and Authorities on Application for Temporary Restraining Order and Preliminary Injunction; Memorandum of Points and Authorities of Plaintiff in Opposition to Motion to Vacate Preliminary Injunction and Notice of Ruling on Motion to Withdraw Appearance for Certain Defendants, all entitled In the Superior Court of the State of California, in and for the County of Los Angeles, Capital Service, Inc., etc. vs. Bakery Drivers Local Union No. 276, et al., No. 595,892 which constitutes the second supplemental transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 11th day of July, A.D. 1952.

Edmund L. Smith, Clerk, By Theodore Hocke, Chief
Deputy.

[fol. 1] IN THE UNITED STATES DISTRICT COURT

Honorable HARRY C. WESTOVER, Judge Presiding

No. 14141-HW Civil

HOWARD F. LEBARON, Regional Director of the Twenty-first
Region of the National Labor Relations Board, for and
on behalf of the National Labor Relations Board, Peti-
tioner,

vs.

BAKERY DRIVERS LOCAL UNION NO. 276, INTERNATIONAL
BROTHERHOOD of Teamsters, Chauffeurs, Warehousemen
and Helpers of America, AFL, Respondent.

No. 14142-HW Civil

NATIONAL LABOR RELATIONS BOARD, Plaintiff,

vs.

CAPITAL SERVICE, INC., a California Corporation, doing busi-
ness under the fictitious firm name and style of Danish
Maid Bakery, and G. Brashears, Individually and as Pres-
ident of Said Corporation, Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
Wednesday, May 21, 1952

[fols. 2-15] APPEARANCES:

For the Petitioner in Case No. 14141-HW: Charles K.
Hackler, Esq., James V. Constantine, Esq., and Norton J.
Come, Esq.

For the Respondent in Case No. 14141-HW: John C.
Stevenson, Esq.

For Capital Service, Inc., Applicant for Intervention in
Case No. 14141-HW: Hill, Farrer & Burrill, by Carl M.
Gould, Esq., Hyman Smith, Esq., and Ray Johnson, Esq.

For the Plaintiff in Case No. 14142-HW: Charles K.
Hackler, Esq., James V. Constantine, Esq., and Norton J.
Come, Esq.

For the Defendants in Case No. 14142-HW: Hill, Farrer

& Burrill, by Carl M. Gould, Esq., and Hyman Smith, Esq., and Ray Johnson, Esq.

For Bakery Drivers, Local Union No. 276, Applicant to appear Amicus Curiae, in Case No. 14142-HW: John C. Stevenson, Esq.

[fols. 16-45] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: May I interrupt for just a minute?

I want to ask Government counsel, won't these two cases be consolidated for the purpose of trial?

Mr. Come: Yes, your Honor.

The Court: If Capital Service is a party defendant in -42, how is it going to harm anything if they are allowed to intervene in -41, if the two cases are to be consolidated for trial?

Mr. Come: They are consolidated for the purpose of introducing evidence, for the purposes of being heard. It makes a difference with respect to the appealability of the action, for example.

The Court: Well, if the two cases are consolidated for the purpose of trial, the testimony in one case will apply to the other case.

.

[fols. 46-47] Los Angeles, California, Monday, May 26, 1952. 2:00 P. M.

The Clerk: No. 5 on the calendar. 14141, Lebaron v. Bakery Drivers Local Union 276. Hearing petition for an injunction under Section 10(1).

No. 14142, National Labor Relations Board v. Capital Service. Motion of plaintiff for preliminary injunction.

The Court: Well, I think possibly the first matter that we should dispose of, if we can, is the question of the application to intervene.

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[fol. 48] MOTION GRANTED TO INTERVENE

The Court: I will resolve the matter in this way: I will grant the motion to intervene. I will reserve a ruling as

to whether or not they can go any further than the question [fols. 49-57] of jurisdiction.

Mr. Come: Thank you, your Honor.

Might I ask a further question?

The Court: Yes.

Mr. Come: With respect to the proposed answer that they propose to file, is that admitted also, subject to the reservation, or what ruling are you making on the proposed answer?

The Court: I will allow the answer to be filed. I will file the answer, with the understanding that the issue before the court at this time is the question of jurisdiction; that if we get beyond the question of jurisdiction, then we will make a subsequent ruling relative to the other issues involved.

Mr. Come: That is quite all right, your Honor, because I want the record to indicate that if the answer were to go in in toto we would move to strike certain portions of it.

* * * * *

[fol. 58] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Let's get that first.

Are you willing to stipulate that Capital purchases about \$30,000 worth of merchandise outside of the State, which is used in its business?

Mr. Gould: Yes, your Honor.

The Court: And I assume that you are willing to stipulate, also, that the total value of raw materials purchased was approximately \$500,000.

Mr. Gould: Yes, your Honor.

The Court: Are you going to argue that \$30,000 is such a small amount of the total value here that the court doesn't have jurisdiction?

Mr. Gould: That is right. That is one of our arguments.

Mr. Constantine: I hate to interrupt, your Honor, but while we are on this subject, perhaps counsel will also state that he stipulated that the other figures with respect to the [fol. 59] other stores are also subject to stipulation, but no stipulation as to their legal sufficiency. I would like that in at this time, because Mr. Come is arguing the question of law as to whether they are sufficient.

Mr. Come: Because, your Honor, our point, fully developed, is that when you have a secondary boycott, such as you have here, as a matter of law in measuring impact on commerce, you look not only to Capital, who is in the primary dispute, but also to the secondary employers affected by the union's conduct.

The Court: Are you going to look at the grocery stores?

Mr. Come: To the extent that we have alleged in our petition.

The Court: Let me ask you this: Is it your contention that the grocery stores are engaged in commerce?

Mr. Come: It is our contention that Capital alone is, and that the activities when extended beyond Capital to the grocery stores are as well.

The Court: Let us try to get one phase out of this question if we can. You have a number of grocery stores that sell merchandise, such as furnished by Capital. Do you contend that these grocery stores, all of them, individually, not collectively, are engaged in interstate commerce, or in business that affects interstate commerce.

Mr. Come: Yes, your Honor, because those grocery stores, [fol. 60] like Capital, also use things in addition to what they buy from Capital that originate from out of the State that would be shut off in the event of a labor dispute carried to those stores.

The Court: Can you stipulate that these grocery stores purchase an appreciable amount of merchandise that originate out of the State?

Mr. Come: That is what we have alleged here, and I understand that the stipulation of Capital is going to cover that, as well, because we have affidavits from the stores with respect to those amounts.

The Court: Are you willing to stipulate that these stores do purchase materials in appreciable amount that originate outside of the State?

You are not stipulating that they purchased materials outside the State; you are just stipulating that they purchased material that originated outside of the State.

Mr. Gould: We stipulate, your Honor, to the allegations in the petition, which appear in paragraphs 6 (a), (b), (c), (d),—

Mr. Come: That is case No. -41, your Honor.

Mr. Gould: I don't know whether there are the same allegations in -42.

Mr. Come: They are to a very large extent.

Mr. Gould: They appear on page 2 of the petition, your [fols. 61-68] Honor. Paragraph 6 and subparagraphs (a), (b), (c), (d), (e), (f), and (g).

[fol. 69] The Court: Will you clarify for me the position of labor in this particular case?

You are representing the unions?

Mr. Stevenson: Yes, that's right.

The Court: Do you admit that the Board has jurisdiction? [fol. 70] Mr. Stevenson: I don't think there is any question about that, in a three-way process. If we didn't think they had jurisdiction, we would never enter into a settlement agreement and agree to withhold our picketing. The very essence of our agreement to not picket, where we induced other persons not to enter these stores, was basely upon the fact that this same petitioner filed a petition before the Board, and they are under the jurisdiction for three reasons.

First, because they themselves are engaged in interstate commerce;

Second, because the stores are engaged in an occupation which affects interstate commerce within the meaning of the Act; and

Third, because the picketing if it induces a truck driver from the Swift Company or the Armour Company, or any other concern, that affects interstate commerce, to withhold services, the Board obtains jurisdiction.

That is the reason for our letter.

The Court: If the Board has jurisdiction, then I assume that you are willing for me to grant a temporary restraining order in -41?

Mr. Stevenson: With respect to -41 our contention is this: there is no question in our minds about the Board's jurisdiction to stop the activities that I have talked about. Our contention under that case is simply that we did not do the things the Board alleges.

[fol. 71] The Court: The only thing that the Board is asking in -41 is that you be restrained from doing the things that you say you haven't done. That can't affect you in any way, if you haven't done it.

Mr. Stevenson: Not greatly, no, except for the fact that we want to make it clear to the court the law says that if the director has reasonable grounds to believe that it is being done, he is entitled to have a temporary restraining order. So we haven't too much to quibble about there.

If he has evidence which is reasonable grounds to believe that it has been done, we haven't too much to complain about.

And, as a matter of fact, our activities insofar as the Board is concerned, we have confined them to lawful activity under the Taft-Hartley law.

The Court: Well, what I am getting at is this: It seems to me from a reading of the cases that if the Board has jurisdiction, that it has the jurisdiction to proceed as it has proceeded.

Mr. Stevenson: We didn't question their jurisdiction.

The Court: Then why shouldn't the temporary restraining order be granted in -41 against the labor unions? You have no objection to the restraining order being granted against the labor unions to restrain them from doing something that you say they aren't doing.

[fol. 72-88] Mr. Stevenson: I wouldn't have any objection if the evidence shows that we did anything that gave the director reasonable grounds to believe an injunction is necessary, I couldn't quarrel with it for a moment.

The Court: Can you raise the question of a reasonable ground at this stage of the proceeding?

Mr. Stevenson: Yes, your Honor.

* * * * *

[fol. 89] Mr. Gould: We should like to go on and clarify something for the court with regard to what might appear to be some apparent conflict, as mentioned by Mr. Stevenson, when he said, "We don't know what our pickets can do, are we under the State jurisdiction or are we under the Federal jurisdiction?" And we say this, that the picket, in regard to his activities, is under both. And we will show your Honor that under the law as it is today there may be concurrent jurisdiction between a State action and Federal action, whether the action is, on the one hand, through a State legislature, or, on the other hand, a Federal legisla-

ture, or whether the action comes through the State judicial body. When Mr. Picket directs his attention to a driver who is an employee, and he induces and encourages that employee to refuse to make a delivery to that market, Mr. Picket is violating the Federal statute.

When Mr. Picket stands with the sign and with the wording addressed to the public, "Do not patronize Danish Maid [fol. 90] products which are sold at this market," the activity of the picket and the sign is directed towards restraining the trade of the Capital Service, Inc., in so far as its sales to that market.

And we will show your Honor that the State statute with regard to restraint of trade, of the nature and of the type and of the enforcement that the California statute is and has been in force, has been held to be within the constitutional power of the State, and so held by the Supreme Court of the United States in the Giboney case, which we have cited in our points and authorities, and in the Ritter case. And we will also show your Honor authority for the proposition that a Federal antitrust statute and a State antitrust statute may coexist and operate concurrently upon the same subject matter and the same persons within the jurisdiction of the State. Congress has left open a certain area for regulation of this type of labor activity by the States. It has prohibited a certain form of secondary boycott, and that is a strike for a certain purpose found by Congress to be an unlawful purpose, and that is the type of secondary boycott only that is regulated by the Federal statute.

Now, there are other types of secondary boycotts which constitute a form of restraint of trade. A secondary boycott, for instance, by a group of employers which restrains [fol. 91] trade contrary to a State antitrust statute is a form of secondary boycott, an employer boycott. A boycott carried on against public acceptance of a product. And that is the type of a boycott that we have here. It comes within the purview of a State antitrust statute.

We are going to show your Honor in the cases decided by the Supreme Court of the United States in 1950 and 1951 there has been clearly left to the States through their legislative or judicial bodies the regulation of certain labor union conduct for certain purposes found to be unlawful

purposes contrary to the public policy of the States declared by the States through the legislative branches. I refer to the Gassam and Hughes cases. And even in the decision of the Supreme Court of the United States upholding the constitutionality of the secondary boycott provisions of the Taft-Hartley Act in the Rice Milling case, the court points out that it has permitted States to declare unlawful picketing for purposes similar to the purposes found to be unlawful purposes by Congress in Section 8(b)(4)(A) of the Taft-Hartley Act.

So in summary we tell this court this: that regardless of the court's finding on jurisdiction here, and we submit that the court will make its finding based upon the facts and the application of the definition of the word "commerce" and the application of the words "affecting commerce" to the facts of this particular case, in any event what we have [fols. 92-110] got involved here, your Honor, is a question of State rights versus an attempt of exertion of Federal power, we say, in an unconstitutional and improper manner.

The State Court has taken jurisdiction of certain activities, as set forth in Exhibit 2 to the complaint in case No. -42, on March 18th, long before this court has been requested to take jurisdiction, and what in effect is being attempted here is a request to the Federal Court to prohibit a State from proceeding to enforce a statute which it has held to be constitutional.

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[fols. 111-113] The Court: We will stand at recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:00 o'clock P. M., Monday, May 26, 1952, an adjournment was taken until Tuesday, May 27, 1952, at 10:00 o'clock A. M.

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[fols. 114-118] Los Angeles, California, Tuesday, May 27, 1952. 10:00 A. M.

The Clerk: No. 14141, Lebaron v. Bakery Drivers Local Union; petition for injunction. No. 14142, National Labor

Relations Board v. Capital Service; motion for continuance still on the calendar, application of the defendant for a three-judge court, and motion of the plaintiff for a preliminary injunction.

* * * * * * *

[fol. 119] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Are you suggesting that Capital not be allowed to participate in the questioning of these witnesses?

Mr. Constantine: Not unless your Honor allows them to intervene fully. As I understand it the intervention is limited.

The Court: I intend to have a full hearing. I expect to develop all the facts that I can develop. They can either come in as a full party or as a friend of the court. I have allowed the labor unions to come in as a friend of the court.

Mr. Constantine: I agree they may come in as a friend of the court, your Honor; but the position they take would be inconsistent with ours, even though these are witnesses which have been supplied to us by Capital Service itself. That is an anomalous position which I should like to call to your Honor's attention.

The Court: Suppose you proceed with your witnesses, and then we will cross that bridge if we get to it.

[fol. 120] CLARENCE ENGWALL, called as a witness on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your name.

The Witness: Clarence Engwall.

Direct examination.

By Mr. Constantine:

Q. You live at 1200 North Grand View in San Gabriel?

A. Right.

Q. What is your occupation, Mr. Engwall?

A. Receiving clerk at Boys Market.

Q. That is located where?

A. 120 East Valley in San Gabriel.

• • • • •
By Mr. Constantine:

Q. That is Boys Market No. 4 in San Gabriel?

A. Right.

Q. And approximately what time do you arrive for work?

A. 7:30 A. M.

[fol. 121] Q. Sometime shortly before the 18th of March, do you recall going to work at about 7:30 and seeing some picketing at Boys Valley?

A. At that time, no.

Q. Was there some picketing during that day?

A. Yes.

Q. About what time?

A. Well, I open at 7:30, and then I usually wait 5 or 10 minutes for bread drivers to come in. There was none coming in, and I looked out and I saw a fellow over in the street on the sidewalk.

Q. Whereabouts on the sidewalk with reference to your store?

A. On Delmar, in the rear of our store.

Q. In the rear of your store?

A. Right. Well, that is the entrance there, there is a vacant lot, but that is our wall, and then the entrance is on Delmar.

Q. And where are deliveries made?

A. The rear of the store.

Q. And with reference to the place where deliveries are made, where was the picket?

A. Out on the sidewalk.

Q. Near the entrance?

A. In the driveway, yes.

[fol. 122] Q. How many pickets were there, do you recall?

A. I only saw one.

Q. And how long did he stay there?

A. Well, I don't know exactly when he came, or I don't know when he left, but when I saw him I reported it to my superior boss.

The Court: Do I understand that this picket was at the driveway where the delivery trucks come in?

The Witness: Right.

The Court: There was no picket at the entrance where the customers come in?

The Witness: No, sir.

By Mr. Constantine:

Q. What time does your store open for customers?

A. 9:00 A. M.

Q. During the time that the picket was there did any deliveries come to your store?

A. None.

Q. Were any scheduled to come?

A. At that time, yes.

Q. Can you give a few of the deliveries that you expected at that time?

A. Well, Barbara Ann—this is all bread drivers.

[fol. 123] Q. Barbara Ann bread?

A. Yes; Log Cabin, Weber, Oroweat, Foix, Taix.

Q. None of those came during the time the picket was there?

A. They come anywhere from 7:30 to 9:00 o'clock.

Q. Do any come between 7:30 and 8:00 o'clock?

A. Yes, about three of them.

Q. Did those three come?

A. No.

Q. At some time during the day did you talk to the picket?

A. Yes.

Q. About what time was that?

A. Oh, in the neighborhood of a little around 8:00 or a little after.

[fol. 124] By Mr. Constantine:

Q. What was the conversation you had with the picket?

A. Well, the only thing that was said that I know of, after my boss—I told him of the incident where no bread drivers were coming in, and I dropped the matter. A little later bread drivers started coming in.

Q. Was that before or after the picket left?

A. After the picket left.

The Court: A minute ago you said you had some conversation with this picket.

The Witness: I did.

The Court: What is the conversation?

The Witness: There was a fellow that came on the dock, and all the bread drivers started talking to him.

The Court: Wait a minute. Can you tell us what you [fol. 125] said to the picket and what the picket said to you?

The Witness: All I asked him was where he was from, and he said he was from the bread drivers' union.

The Court: That is all he said?

The Witness: That's all.

By Mr. Constantine:

Q. But he did talk on the dock with some of the bread drivers?

A. Yes, there was some talk there, but I wasn't in on that.

The Court: Did you see him talk with any bread driver?

The Witness: Yes.

The Court: Do you know what company the driver was driving for?

The Witness: I don't remember. There was three of them. It was one of them three or four that he was talking to.

The Court: Did you see any trucks there?

The Witness: Yes, the trucks were there.

The Court: Bread trucks?

The Witness: Yes.

The Court: Do you know whose bread trucks they were?

The Witness: I could name three, but I wouldn't be exact. Barbara Ann, Log Cabin, and Weber.

[fol. 126] By Mr. Constantine:

Q. Did any of those truck drivers make deliveries?

A. Yes.

Q. At that time?

A. No.

Q. While that picket was around?

A. Yes.

By Mr. Constantine:

Q. While the picket was there no deliveries were made?

A. Right.

The Court: This picket carried a placard, didn't he?

The Witness: He carried a sign.

The Court: I assume that the wording upon the sign is as set forth in the complaint, is that correct?

Mr. Gould: We presume it is.

Mr. Stevenson: We so stipulate.

Mr. Constantine: I so stipulate, also.

[fol. 127] The Court: Can we stipulate that in these proceedings when we are talking about a picket we mean somebody that is walking up and down with a placard over his shoulder on a stick with the words as set forth in the complaint?

Mr. Constantine: Yes, your Honor, I will stipulate.

Mr. Gould: We will so stipulate.

Mr. Stevenson: So stipulated.

The Court: All right.

By Mr. Constantine:

Q. Did you hear any of the conversation which this picket had with the truck drivers on the dock?

A. No, I don't remember of any of that.

Q. But you did notice that there was some conversation?

A. That's right.

Q. And the dock is your receiving platform?

A. Right.

Q. About when did the picket leave?

[fol. 128] A. Well, around 8:00 o'clock, or a little after, is when the bread trucks start rolling in.

Q. Did you notice whether there was a picket there at that time?

A. Not when the bread trucks come in.

Q. There was none at all?

A. No.

Mr. Constantine: That is all I have of this witness.

The Court: May I ask a question?

Do you mean to say that the man had disappeared, he had gone away, or had just done away with his sign?

The Witness: All I saw was a sign, I didn't read it, I couldn't, I was too far away. When the bread trucks were coming in, there was a fellow on the back dock with these bread drivers, and I started receiving deliveries.

Mr. Constantine: I have no more questions of this witness, your Honor.

Col. 129] Cross examination.

By Mr. Stevenson:

Q. The picketing that you described was the first picketing that this particular store had with relation to this dispute, was it not?

A. That is the only one I have ever seen.

Q. That is the first time you saw any pickets at all?

A. Right.

Q. You told us that the picket left, and when the picket left the bakery trucks made deliveries?

A. No, sir. The picket was there when the drivers were making deliveries. After the picket was off the sidewalk.

Q. I don't quite understand you. First you say you saw the picket with his sign, is that right?

A. Right.

Q. And that no drivers came in?

A. That's right.

Q. Then later on you say some drivers did make deliveries?

A. Right.

Q. Where was the picket at that time?

A. He was over there by the dock where I do the receiving.

Q. Was he carrying the sign?

A. Absolutely not.

Q. In other words, your statement is, then, that there was no actual picketing going on when the drivers made deliveries?

A. Right.

By Mr. Stevenson:

Q. When you say the picket was there, do you mean the person who had been carrying the sign previously was there, without the sign, is that right?

A. Say that again, will you please?

The Court: Read the question.

(The question was read by the reporter.)

The Witness: Right.

Mr. Stevenson: That is all.

Cross examination.

By Mr. Gould:

Q. Did you see the picketing at the customers' entrances of the store that day?

A. No, sir.

Q. Or on any other day?

[fol. 131] A. No, sir.

The Court: Did this picketing occur on more than one day?

Mr. Constantine: Just one day, at this store.

The Court: All right.

By Mr. Gould:

Q. And you never saw any pickets at the entrance that is used by customers at any time?

A. No, sir.

Mr. Gould: No further questions.

Mr. Constantine: I have no further questions.

Mr. Stevenson: Your Honor, I wonder if I might ask this witness one more question.

[fol. 132] The Court: All right. Come back to the stand, please.

Cross examination (Resumed).

By Mr. Stevenson:

Q. Is your receiving dock in the back of the store?

A. Right.

Q. All right. Did you at any time during this period go around to the front of the store?

A. No, sir.

Q. Then, when you say you didn't see any picket at the customers' entrance, that is in front, is it not?

A. Right.

Q. You didn't go around there to look for any, did you?

A. No, sir.

Q. And you couldn't possibly see a picket around in the front from the receiving dock in the back, could you?

A. Impossible.

Q. That is what you meant when you said you didn't see any picket in the front?

A. Right.

Q. There might have been one there, but you were in the back of the store?

A. I couldn't see him.

Mr. Stevenson: That is all.

The Court: I would like to ask the witness a question.

Did I understand you to say that you started to receive [fol. 133] bread usually about 7:30 in the morning?

The Witness: Right.

The Court: About 7:30?

The Witness: Yes, sir. I open the door.

The Court: All right. You may step down.

HUGH CLARK,

called as a witness on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your name.

The Witness: Hugh Clark.

Direct examination.

By Mr. Constantine:

Q. Where do you live, Mr. Clark?

A. 11354 Cohassett Street, Sun Valley.

Q. And your occupation?

A. Manager of Valley Stores.

Q. And Valley Stores operates two markets in North Hollywood?

A. Right.

Q. On what street?

[fols. 134-135] A. On Moorpark Street.

Q. And you are usually stationed at which store?

A. No. 2.

Q. The other one is called No. 1?

A. 12903 Moorpark Street.

Q. And your store, both stores, purchase Danish Maid Bakery products?

A. Yes, sir.

Q. About when did you start buying those?

A. Well, about five years ago, I guess.

Q. And you have been buying them ever since and still continue to buy them now?

A. Yes.

[fol. 136] By Mr. Constantine:

Q. Do you remember the morning of February 11, 1952, when there was some picketing at your store, Valley Store, No. 2?

A. Yes, I remember the morning.

[fols. 137-139] Q. And during that morning did anyone come in to see you with respect to Danish Maid products?

A. Yes.

Q. Did the people identify themselves?

A. Yes.

Q. Who were they?

A. Well, they — from the union.

Q. Did they say what union?

A. I am quite sure he did say when he came in.

Q. Do you remember now what union they mentioned?

A. Bakery Drivers' Union. I don't remember what the number is.

Mr. Constantine: I would like to have the witness see this affidavit, your Honor, on the question of whether it refreshes his recollection as to the number of the union.

[fol. 140] The Court: Do you remember that you made an affidavit?

The Witness: Yes, I do.

The Court: Is that your signature?

The Witness: Yes, sir.

The Court: Do you remember about when you made the [fol. 141] affidavit?

The Witness: Well, it was right shortly after this all occurred.

The Court: And you made the affidavit for whom?

The Witness: For whom?

The Court: Yes.

The Witness: For the bakery.

The Court: Did you make the affidavit yourself, or did you sign an affidavit that had been made for you?

The Witness: No. I made it myself. I mean I just quoted what happened.

The Court: And somebody wrote it up from your quotation?

The Witness: Yes. And then I read it and signed it.

The Court: All right.

Now you may look at the affidavit.

By Mr. Constantine:

Q. Does that refresh your recollection as to the name [fols. 142-144] of the union?

A. Yes.

Q. Will you please state to the court what the name of the union is as those gentlemen gave it to you?

A. Bakers Union.

Q. Did they give a number?

A. Yes, what was right there.

Q. What was it?

A. Two seven—what was it?

Q. Two seven what?

A. Two seven six or Two seven three, I don't know. I didn't memorize it. It is there.

Q. Was this affidavit true at the time you made it?

A. Yes.

[fol. 145] By Mr. Constantine:

Q. Did you have any talk with these gentlemen from Local 276?

A. Yes, I did.

The Court: Can you establish who they were and their position in the union?

[fol. 146] Mr. Constantine: Yes, they were business agents.

Mr. Stevenson: We will stipulate one of them was Mr. Henry Becker, business representative of Local 276. That will save a lot of time here.

Mr. Constantine: That is our information also, your Honor. I will so stipulate.

By Mr. Constantine:

Q. What was the conversation you had with these gentlemen, one of whom was Mr. Becker?

A. While I was putting the bakery goods on the counter at the time, he asked me if Bob hadn't called me from the other store, that he had talked to him previously, and that he said something about not putting it up. I said I didn't know anything about it. I was just putting it up.

Q. Putting what up?

A. The bakery goods, putting it on the counter.

Q. Whose bakery goods?

A. Danish Maid Bakery goods.

Q. All right, will you continue?

A. So he said, well, if I proceed to put it up they were going to picket.

Q. They told you that?

A. Yes.

Q. Did you proceed to put it up?

A. Well, no. I stopped putting it up and I said I will have to find out from my superior. I can't take it off or I can't [fol. 147] go ahead and put it up, without finding out. I don't have the authority to say which way to go on it.

Q. What happened after that?

A. It took a few minutes, I mean five or ten minutes, before I could get ahold of anyone, Bob at the other store, who was my boss. In the meantime I just left it as it was right where I stopped working on it. And they brought in one of the picket signs and let me read it. And right after I read it, then they took it back out and they just stood out in front while I waited until I found out, until I could get a telephone call through to my boss.

Q. And they picketed out front?

A. They weren't picketing; they were just standing out there.

By Mr. Constantine:

Q. What did they do while they were out there?

A. They just stood there and talked. They were waiting for me. I told them I couldn't do anything until I could talk [fol. 148] to my superior on it, so they just stood there and waited. They were just talking amongst themselves.

The Court: What did they do with the sign?

The Witness: Had it laying there against the telephone pole, leaning up against the pole.

The Court: They weren't walking up and down in front?

The Witness: No, they weren't walking up and down in front; they were just standing there.

Mr. Constantine: I assume our stipulation with respect to the signs, to the language of the picket sign, also includes this particular picket sign?

The Court: I assume that all the signs include this particular wording.

By Mr. Constantine:

Q. While they were there did you have any deliveries made, or were you expecting any deliveries at your store?

The Witness: Yes. Barbara Ann delivered. He was practically through before they got there. He finished his delivery, and then he left.

By Mr. Constantine:

Q. Barbara Ann delivers bread?

A. Yes.

[fol. 149] The Court: My understanding is that this picket was out in front?

Mr. Constantine: Yes.

The Court: Not in the back where the deliveries are made?

The Witness: Our deliveries are not made in the back; they are made from the front.

The Court: The deliveries are made in the front?

The Witness: Bread deliveries are.

The Court: Through the front door?

The Witness: Yes.

The Court: And these pickets——

The Witness: There is a front and side. I mean they make them through either door.

The Court: These two men were standing out there at the front entrance?

The Witness: Right by the front entrance, yes.

By Mr. Constantine:

Q. How far were they from the side entrance?

A. It is just 15, 20 feet to the side entrance.

Q. And who else besides Barbara Ann delivered while the men were there?

A. No one else.

Q. Did you notice whether they were in front all the time that they were there, or did they go to any other place?

[fol. 150] A. Well, they went around the side for just a minute and talked to Barbara Ann. Of course he was through, he had made his delivery.

Q. These men did talk with the driver of the Barbara Ann on the side of your store?

A. For just a second there, and then he left.

Q. No other deliveries were made while they were there?

The Witness: That was the only one that was delivered, yes.

The Court: What time of the morning was this? I don't think you testified as to what time in the morning this was.

[fol. 151] The Witness: That they——

The Court: That these parties came in to see you.

The Witness: About 9:15.

The Court: What time are bread, cakes, pastries delivered usually at your store?

The Witness: Well, starting about a quarter to nine on through until maybe 10:00 o'clock, 10:15.

By Mr. Constantine:

Q. How long were these pickets there?

A. I couldn't say exactly, but I think—probably left about 10:00.

Q. And is it your best recollection now that no other truck drivers came at the time that the pickets were there?

A. There was another truck driver, yes.

Q. There was another one?

A. That come in there, but he didn't deliver. You ask me if any others delivered.

The Court: Counsel, may I interrupt?

Mr. Constantine: Yes.

The Court: I assume you are talking about bread truck drivers?

Mr. Constantine: Any truck drivers that were coming to make deliveries to his store.

The Court: You are not just restricting yourself to deliveries of bread?

[fol. 152] Mr. Constantine: No, your Honor.

The Court: Is it your contention that all deliveries were stopped?

Mr. Constantine: While the pickets were there, yes, your Honor.

The Court: I thought your contention was that bread deliveries were stopped. Your contention is that all deliveries were stopped?

Mr. Constantine: All deliveries were stopped while the pickets were there.

Apparently the only deliveries he expected were bread.

The Witness: Well,—

The Court: Then you might phrase your question as to whether or not any bread—

By Mr. Constantine:

Q. Did any bread trucks come?

A. Yes.

Q. While the pickets were there?

A. Yes.

Q. From what company?

A. From Weber.

Q. And Weber supplies you with bread?

A. Bread.

Q. About what time did that truck come?

A. About 9:30, I imagine.

Q. Did he make the delivery?

[fol. 153] A. No.

Q. Where were the pickets at the time that he came to your store?

A. Right out in the front, right out in the front by the telephone pole, right where he drove up to stop.

Q. And he stopped about where with reference to your store?

A. Right in the street, right on the street——

The Court: May I ask a question?

Mr. Constantine: Yes.

The Court: When Weber drove up where was the sign—still by the telephone post?

The Witness: Yes.

The Court: And there was no picketing?

The Witness: They weren't picketing. They were more or less waiting for me to find out what I was going to do, I guess.

The Court: But the Weber truck drove up——

The Witness: And stopped.

The Court: —and then drove away?

The Witness: They talked to him, and then he left.

By Mr. Constantine:

Q. They did talk to the Weber truck man?

A. Yes.

Q. Did you hear what they said to him?

[fols. 154-157] A. No, I didn't.

Q. How long after they talked to him did he leave?

A. I don't know. Five minutes, I suppose, or something.

Q. He did not make the delivery?

A. Not right then.

Q. Did Weber come back later in the day to make a delivery?

A. Yes.

Q. Was there a picket there at that time?

A. No.

Q. What time did Weber come back?

A. I don't know. I imagine around noon, I don't know. I wasn't out in front at the time when he come back.

Mr. Constantine: I have no more questions.

The Court: Do you have any questions?

[fol. 158] Cross-examination.

By Mr. Stevenson:

Q. Now, the picketing or the visit that you had on that morning, how long did the men stay?

A. Well, I think they were there probably three-quarters of an hour, maybe not quite that long, but somewhere in that length of time.

Q. Then they left?

A. Yes.

Q. Is that the first time any representatives of the union visited your store?

A. The first time they ever visited the store that I am at, yes.

Q. Was that the only time that they ever visited your store?

A. Yes.

Q. They didn't come back later on and picket?

A. No.

Q. Did you take Capital Service products off the shelf, or Danish Maid products off the shelf?

A. After I talked to my boss, yes, I took it off, put it back in the case and shoved it outside. That is when they left. They left right then.

Q. And you have not been picketed since that time?

A. No.

Q. Are they back on the shelf now, Danish Maid?

A. Yes.

Mr. Stevenson: That is all.

[fols. 159-160] Cross-examination.

By Mr. Gould:

Q. Isn't it a fact, Mr. Clark, that one of these men said to you that, "We can't stop any drivers from delivering to you"?

[fols. 161-162] The Witness: Yes.

By Mr. Gould:

Q. Also one of these men said to you that there might be a few drivers who won't deliver on their own?

The Witness: I am not positive on that. I know the first part they did say.

[fol. 163] Q. Do you recall this part, that they said there might be a few drivers who on their own hook might not make any deliveries.

A. Well, I just don't remember it worded that way. I remember they said that they couldn't stop them, that they could make deliveries if they wished.

Q. And it was up to the driver himself what he wanted to do?

[fol. 164] A. It seemed that way, yes.

Q. And that is what you told Tom Brashears?

A. Yes.

Mr. Gould: No further questions.

Cross-examination (Resumed):

By Mr. Stevenson:

Q. Did you make this statement in your affidavit, or in your statement to Tom Brashears: It was soon thereafter that Weber Bakery driver drove up to the front of the store and talked to the two union men, he then left without leaving any bread or coming into the store, although he was due to deliver some bread. I then realized that we were not going to receive any deliveries that day due to the pickets? Did you make that statement to Mr. Brashears?

A. Yes.

Q. And signed the affidavit to that effect?

A. Yes.

Q. That it is not true that any union man told you that he could not or would not or did not want to stop deliveries? [fol. 165] The Witness: It is a true statement, yes, that the union men said that they couldn't stop them.

The Court: You testified on direct examination about the two men, that the only truck that came up was Weber's; you didn't testify that you realized that you weren't going to get any more bread that day.

The Witness: No.

The Court: You say you made the statement. I want to know whether it was a true statement that you made.

The Witness: Well—

The Court: The fact of the matter is that you didn't realize anything, did you?

The Witness: I didn't get any. I mean there was no delivery made.

The Court: Of bread, during that entire day?

The Witness: None made until after—they were only there for approximately three-quarters of an hour. Yes, all the bread was delivered that day, but they were only there for approximately three-quarters of an hour.

The Court: Well, my understanding of your testimony is that these two men stood out front, they did not walk up and down.

The Witness: Right.

[fols. 166-167] The Court: The sign was lying over against the telephone pole?

The Witness: That is correct.

The Court: Now——

The Witness: They were waiting——

The Court: They weren't picketing your store, were they?

The Witness: No. They were waiting for me. I couldn't just pull this stuff out without getting an O.K. from my boss.

The Court: While they were waiting for you they didn't picket the store?

The Witness: No, they were waiting for me to find out if I was going to take it out, I presume.

By Mr. Stevenson:

Q. Did you actually realize and believe at that time that you were not going to get deliveries if the place was picketed?

[fol. 168] The Witness: Well, I believed it, yes, because when I finally got ahold of my boss on the phone I asked him what I should do. He said we should take it out, that we won't get deliveries. I didn't know. I said I didn't know whether we would or wouldn't. He said take it off, get it out, then. Which I did.

By Mr. Stevenson:

Q. You say, also, "I called in one of the pickets to talk to Mr. Haney"—is that your employer?

A. Yes.

Q. "After the picket had finished talking, he said to me that as long as I had removed the Danish Maid products the pickets would leave and go down to the other store." Is that a true statement?

A. That is a true statement.

Q. Then is it a true statement that you realized you were not going to receive any deliveries that day if the place were picketed.

The Witness: Yes, I presume we wouldn't.

[fol. 169] By Mr. Stevenson:

Q. Was that a true statement when you made it, or was it something written up for you that you signed?

The Witness: Yes, yes, it was a true statement. I will say it was a true statement.

By Mr. Stevenson:

Q. Then it is not true that the pickets told you that they could not stop deliveries?

A. They said they couldn't actually stop them, but doubted if any of them would deliver.

Q. They said they couldn't stop them, but they were doubtful whether anybody would deliver?

A. Yes.

[fol. 170] Mr. Stevenson: No other questions.

Cross-examination (Resumed):

By Mr. Gould:

Q. Mr. Clark, had you on any occasion prior to this date had any experience with any pickets at the market?

A. No.

Q. So you did not of your own knowledge know whether or not any deliveries would or would not be made because of any picketing?

A. I didn't know, no.

Q. And the deliveries were made that day?

A. My deliveries were made that day? Yes.

Q. And they were made thereafter?

A. Right.

[fol. 171] Mr. Gould: I have no further questions.

The Court: Any questions on the part of the Government?

Mr. Constantine: Yes.

Redirect examination.

By Mr. Constantine:

Q. When did deliveries occur,—before or after you had agreed to remove the Danish Maid products?

[fol. 172] A. Well, it just happened that that morning there wasn't—there was only two deliveries made, I mean, two men come up there for deliveries during the time all this was going on.

Q. Now, those men came back again, didn't they?

A. Well, Barbara Ann, like I said, had already delivered his bread, and he left, and Weber come in and didn't deliver, and he left.

Q. And Weber came back after the picketing had been removed?

A. Yes, and there weren't any others that come in during that time before they left.

Q. Weber also came back after you personally had re-[fol. 173] moved the Danish Maid products on your shelves?

A. I removed it, yes.

Mr. Constantine: That is all.

The Court: You may step down.

Now, I want to ask counsel another question.

The Court: You are not contending that that is an unfair labor practice here as far as the employers are concerned?

Mr. Constantine: No.

The Court: You are not contending that Capital in any way performed or encouraged an unfair labor practice?

Mr. Constantine: No. We are on their side and they are doing all they can to defeat the case which they have asked us to prosecute.

[fol. 174] ROCCO GERARDI, called as a witness on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your name?

The Witness: Rocco Gerardi.

Direct examination.

By Mr. Constantine:

Q. Where do you live, Mr. Gerardi?

A. I live at 10427 La Tuna Road, Sun Valley.

Q. And your occupation?

A. I am a bakery supervisor.

Q. For whom?

A. Weber Baking Company.

Q. That is located where?

A. 6841 San Fernando Road, Glendale.

Q. Do you supervise an employee by the name of Ross [fols. 175-178] McBurney?

A. That I do.

Q. Do you know his route?

A. Yes.

Q. Does his route include Valley Stores 1 and 2?

A. It includes both stores.

Q. They are in North Hollywood?

A. Yes.

Q. And they are the stores about which the last witness, Mr. Clark, was testifying?

A. I believe Mr. Clark is the manager in one of the stores.

Q. Do you know what has happened to Mr. McBurney?

A. He had a goiter operation, he has been off for the past five or six weeks.

Q. He has not been able to come to work?

A. No. I think he will come next week.

Q. And sometime in February, 1952, you went on Mr. McBurney's truck along with him when he made deliveries?

A. Yes, I believe I did.

Q. Do you remember the date?

[fol. 179] A. February 11th, that's right, I guess. I put it down that way.

The Court: Do you know whether that is right, or not?

The Witness: Well, I was with him on a day out there, the day of the incident, so I guess it must have been February 11th.

By Mr. Constantine:

Q. At the time you gave the statement were the incidents fresh in your mind?

A. Well, I wouldn't say they were fresh in my mind, because I hadn't been thinking about them.

Q. But that was the best of your recollection at that time?

A. That was the best of my knowledge at the time.

Q. Did you go to any of the Valley Stores with McBurney on that day?

A. We went over the whole route, we went to both Valley Stores.

Q. And your purpose in going to the Valley Stores was to do what, to deliver what?

A. Well, it was Mr. McBurney who was going there to deliver bread.

Q. That was part of his route?

A. Yes.

Q. Weber's bread?

A. Yes.

[fols. 180-204] Q. Which store did you go to first?

A. Well, in the order that they come we served No. 1 first.

Q. When you arrived at No. 1, did you observe any picketing there?

A. What do you mean by picketing?

Q. Were there any pickets at Valley No. 1 at the time the truck drove up there?

A. I drove—I mean McBurney drove into the alley, I wasn't driving.

Q. When McBurney drove in the alley——

A. I saw no pickets.

Q. Did anyone come up to speak to McBurney?

A. I believe someone did come up to speak to Mac as he drove in the alley.

[fol. 205] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Now may I ask you a question?

All the picketings at the stores were at the same time, [fol. 206] that is, on the same day?

Mr. Constantine: No, your Honor.

Mr. Come: No, your Honor.

Mr. Stevenson: Pardon me.

Mr. Come: I assume they are at different days.

Mr. Stevenson: They continued over, and even after the injunction in the State Court was issued, your Honor, we picketed.

They took no action.

The Court: You didn't picket all the stores simultaneously?

Mr. Stevenson: No, your Honor. That is too big a job.

[fols. 207-209] Mr. Gould: We will finish by saying that the State Court injunction does not prohibit this union from secondary boycott activities at the markets at which they stopped the deliveries, at all.

Mr. Stevenson: That is the most outlandish statement I ever heard. If your Honor reads the injunction, that is sufficient.

[fols. 210-212] Mr. Stevenson: Your Honor, I wonder if I might at this time read to your Honor just a portion of the complaint with respect to the issue of concerted activity, and the answer which we filed, and then ask the court to admit in evidence the complaint and the answer, both verified.

The Court: The complaint and answer in what case?

Mr. Stevenson: In the State case, your Honor.

Mr. Stevenson: In the first place, your Honor, this action is titled Capital Service, Inc. versus the following unions and a great many individuals.

[fol. 213] The Court: May I ask you a question?

Did the markets come in and answer the complaint?

[fol. 214] Mr. Gould: They were not served by the time that we had gotten into the stage of the preliminary injunction. However,—

The Court: If they were not served, then they were not a party.

Mr. Gould: They were not a party but they are named parties.

The Court: Do you mean to tell me that as far as we have gone with these three witnesses, that there is any basis at all for conspiracy between the markets and the labor unions?

Mr. Gould: No, your Honor.

The Court: There may be, but so far we haven't any evidence of any conspiracy.

Mr. Gould: There isn't any such allegation in any proceedings that are before this court.

The Court: I know, but you allege in your other complaints, do you not, that there was a conspiracy?

[fol. 215] Mr. Gould: In the State Court action, a conspiracy in restraint of trade.

The Court: What do you allege in the Peirson Hall action?

Mr. Gould: We allege that the defendant unions are engaging in secondary boycott activities by inducing and encouraging suppliers, employees of suppliers to these markets, to cease supplying these markets for the purpose of compelling the markets to refuse to do business with us.

We do not allege in the Peirson Hall action that there is any combination between the markets and the respondent unions.

The Court: Are you willing to now agree that there was no conspiracy between the unions and the markets?

Mr. Gould: In so far as the Federal action is concerned—

The Court: As far as this whole picture is concerned. I am not just interested in the Federal action here. Now, we have a state of facts. We have had three witnesses. I don't know what the other witnesses are going to testify to yet, but there hasn't been anything yet to clarify any conspiracy.

Mr. Gould: Let's clarify that.

We do not contend that there is any conspiracy whatsoever between the picketing union and any of the markets that are being picketed, as alleged in the Federal Court action.

[fol. 216] Our only allegation of conspiracy involving

markets in the State Court action comes about this way: We say that when the bakery union enters into an agreement with competitive bakeries pursuant to the terms of which no fresh baked bread is delivered to the markets, there is an illegal combination in restraint of trade between the union and the bakery, competitive bakers, and we say that one of the reasons that the union went to these market customers of ours and requested the markets to discontinue buying our product was because we were delivering fresh baked bread on Wednesdays, which the union and the competitive bakers agreed not to do. So that we say the deprivation of the public, the consumers, of fresh-baked products by reason of an agreement between the bakery unions and the competitive bakers is in restraint of trade.

We say that is only one of the reasons for the picketing.

That does not concern this court in this action.

We say that that is a matter of concern for the State Court enforcing the State Cartwright anti-restraint-of-trade statute.

The Court: I know, but your State Court has held there is no violation of the Cartwright Act.

Mr. Gould: The Superior Court so held. The District Court of Appeals, we submit, will hold otherwise, and we submit that the Supreme Court may hold otherwise. And we further say that when the trial on the merits in the State [fol. 217] Superior Court takes place, and when all the evidence is in, documentary and otherwise, there will be substantial preponderance of evidence proving the combination in restraint of the California Cartwright Act as we allege in our complaint.

We must keep in mind that we are merely at the threshold of the California State proceedings. We filed a verified complaint, an order to show cause issues, affidavits are filed, the court at that stage decides, as a matter of equity jurisdiction, whether to prohibit conduct which it deems to be contrary to the policy of the State of California, either legislatively declared or judicially declared, and within the power of that court, given to it by the decisions of the Supreme Court of the United States in the Hughes, Giboney, Gassam and Hankey cases. So we are here at the threshold of the State proceedings.

What the evidence will show will be a matter for the jurisdiction of that court on the merits. At this stage, all this court can do is look at this verified complaint in the State Court to see what the gravamen of the action is. All this court has jurisdiction to do in so far as this proceedings by the Labor Board against this respondent union is to see whether the conduct of the labor organization—and, mind you, there is only one in this case, whereas in the State Court there were a number of other parties that are not parties before this court—all this court has jurisdiction to [fol. 218] do, we say, assuming that there is commerce, is to determine whether the labor organization and its agents have and are inducing and encouraging employees of other employers to engage in concerted refusal to work for their employer for the purpose of compelling the markets not to purchase the product of Capital Service. That is all this court has the jurisdiction to do, as we see it at this time.

Now, counsel comes along and says, well, somebody said something about there not being any concerted activities.

There may be concerted activities contrary to a State statute, which are other and different concerted activities than that which is necessary to find under a Federal statute, completely different statute.

Section 8(b)(4)(A) that the court read requires a finding that there was an inducement to concerted refusal to work by employees of neutral employers, as we call them, the suppliers, the bread companies, the meat companies, the dairies, that supply these markets.

All that the statute prohibits is conduct which affects action by employees. Under the State Court statute, there may be a combination in restraint of trade carried out by a group of employers, there may be a combination in restraint of trade carried on by a group of independent contractors, there may be a combination in restraint of trade carried on by a group of members of labor organizations acting pur-[fols. 219-221] suant to an agreement with a group of employers, all of which activities don't necessarily involve picketing, they do not necessarily involve oral or written agreements. It is the whole conglomeration of acts and circumstances by which a court determines whether there is a combination in restraint of trade applying the statute.

[fol. 222] The Court: I wonder if we could get a stipulation. I think we ought to be able to get a stipulation. You stated a moment ago that Capital was non-union.

Mr. Stevenson: That's right.

The Court: I suppose that we can get a stipulation that efforts have been made to unionize Capital, but that Capital resisted?

Mr. Gould: We will not so stipulate.

Mr. Come: Your Honor, I should like to, if I may interrupt, call the court's attention to the fact that the National Labor Relations Board in 1949, as a matter of fact, conducted an election among the employees of Capital for the purpose of determining whether or not they wanted the bakery drivers union to represent the employees. The union lost that election. So that certainly was one instance of an effort [fol. 223] being made to unionize the employees of Capital Service.

The Court: I want some verification for counsel's statement that there was a dispute between Capital and labor.

Mr. Stevenson: The dispute comes in this fashion, irrespective of the joining or non-joining. The union endeavors to organize the particular company; if the union is unsuccessful in organizing that company, it has the right, under the Taft-Hartley law, to picket for the purpose of organization, purely.

In our case our dispute is this: that the employees, as we set up in our answer, also, the employees of this particular concern are working in competition with employees in this entire area in the bakery industry, and the employees who are unionized are working at a higher scale and at shorter hours than those in Capital Service. Our dispute comes by reason of that variation, and that differential.

The Court: Can we get this out of Capital? Is Capital willing to stipulate that there was a dispute with the union?

Mr. Gould: We certainly will not, your Honor. And here is why we will not: there was no approach or contact from the unions since April or May of 1949. And, in fact, when the drivers of Capital were followed by representatives of the union to these markets to ascertain where they were selling the product, they were never requested to join the union. One of the employees requested the union to be per-

mitted to join, and he was refused. The union never con-[fol. 224] tacted Capital before all this picketing started in 1952 and said "We would like a contract from you." Nor have they yet—there has been no attempt to organize the employees of Capital, the union has never picketed at the bakery to try to organize the employees down there. There is no labor dispute within the provisions of the California law, as we see it.

If you take the wide and broad kind of a statement that counsel here makes of a labor dispute, that is an entirely different thing.

The Court: What do you assume was the purpose of these picketings? Was it just an arbitrary decision not to allow Capital to sell any bakery goods. What was the purpose behind it?

Mr. Gould: We can't read into their minds. We are suspicious. We think the competitive bakers have felt the impetus of Capital's new way of merchandising. Capital has done something in this area that was never done by any bakery. It supplies to the self-service departments of the retail food markets daily fresh-baked products which are not available in the retail self-service departments of the market.

Your Honor recalls you go through a turnstile and get yourself a basket on a cart and you serve yourself with the products in the food departments, and then you walk up and pay a checker. Now, there are only certain bakeries that operate concessions where bakery goods are found in [fol. 225] certain markets, such we will say as Van de Kamp's, that you tell the clerk behind the counter what you want, you wait in line quite often, she wraps it for you, takes your change, and you go. For the first time there is a new method of merchandising in these markets. The plaintiff has an aluminum case that is rolled into the market and placed right in the self-service department, so that the customer for the first time gets fresh-baked products daily, where the other competitive products of the competitive bakeries may be two, three, four or more days old.

We are suspicious, and we think we may be able to establish in our State Court action that the fine Italian hand of competitors is using this union to see if they can knock

us out of the markets, for one thing. Secondly, the competitive bakeries have agreed with the defendant unions that there will be no fresh-baked products delivered on Wednesdays of each week.

We insist that the public is entitled to our product on Wednesday.

We think there is a combination in restraint of trade there.

Thirdly, we say this: that our driver does not sell any merchandise. He comes up to the market and rolls in the products, they are sold, he doesn't handle the cash, we collect [fol. 226] from the market, he has no responsibility for credit or for display, or anything else, he is merely a delivery man. The competitive bakers, on the other hand, have commission salesmen whose earnings, in part, depend upon the commissions that they earn from the sales of the product, which they deliver to the market and display and are responsible for. Therefore, there is competition here between the plaintiff, who is engaged in business, and these commission salesmen, for one **thing**, the competitive bakers for another thing. And we put in these defendant markets, some of them, not those whose testimony has come in so far, as defendants, because we say these defendants come to the market operators, employers, and say to them, "We want you to agree not to handle Danish Maid products, they are in competition—we have it in evidence already in the record in the State Court—between the commission salesmen and the Danish Maid Bakery Company, and we don't like the idea that they are delivering on Wednesday, we want you not to do business with them; and the market said, "I like their product, there is a great demand on the part of the public for it, it is unusual that the public can get fresh-baked products every day that they want it, I am not going to take it out."

The next thing that happened, as the affidavit shows in the State Court proceedings, picketing of the market. Now, at that stage the subterfuge comes into play, in our side of [fol. 227] the case. The sign goes up to the public, "Danish Maid products on the Do Not Patronize list of Central Labor Council, Joint Council of Teamsters, Bakery Drivers Union," and the boycott is carried on against the consumers now. This is at the front of the market that we are aiming

our action in the State Court. Nothing to do with deliveries made at the back. Some markets, of course entrances may be near each other. So we say the combination of restraint of trade being carried on is contrary to the California Cartwright Act, and the State Court action lies.

We come along and we find that another method that the union has used to try to compel the markets not to do business with us, those that don't agree with the union—and I must pause for a minute. It is our contention that whether the market operator, employer, agrees voluntarily or involuntarily to go along with the unions and our competitors in restraint of trade, it still makes the market operator liable in damages to us, and he may be enjoined, if he unwillingly goes along with threats on the part of the unions to discontinue doing business with us.

One of the methods that the union uses to pressure this market operator to go along with the deal is to tell him that they will put a picket line at the delivery dock. And in order to skate a thin line, the union knows if they tell the driver that he cannot deliver, or use any penalties or sanctions [fol. 228] against the driver to compel not to deliver, it is violating the Taft-Hartley Act.

We filed a charge at the Labor Board, and we charged that the defendant unions are inducing and encouraging, and the drivers, employees of the suppliers to the markets, to not make deliveries to this market for the purpose of compelling the market to cease doing business with us.

Now, there is only one statute that is available to the plaintiff that will stop that kind of activities, and that is the Taft-Hartley Act.

The market operator could have filed a charge, any person could have filed a charge. It happens that the plaintiff filed the charge to initiate the proceedings. And the Board investigates it and doesn't find substantiation, and so informs the plaintiff and informs me and co-counsel, and also says, "You are not within the purview of the Act."

Even if we were under the purview of the Act, and even if the court did take jurisdiction of this proceeding, and even if the activities were contrary to the Taft-Hartley Act, nevertheless this court enforcing Federal statutes is doing nothing that in any way, shape or form conflicts with the Cartwright restraint-of-trade action in the State Court.

The activities are entirely different, they are for a different purpose, the activities are carried on in a different manner, and they are carried on contrary to completely separate and [fols. 229-247] different statutes.

[fol. 248] Direct Examination (Resumed) of Mr. Rocco Gerardi.

By Mr. Constantine:

Q. Do you recall the name of the person that spoke to McBurney at Valley Store 1 on February 11?

A. I believe that was Chet Leonard.

Q. Do you know him personally?

A. I do.

Q. And do you recall the conversation between him and McBurney?

[fol. 249] The Witness: Yes.

By Mr. Constantine:

Q. Are you a member of Local 276 of the Bakery Drivers Union?

A. I am.

Q. And do you know whether Chet Leonard holds any position in that local?

A. I believe he is the business agent.

Q. Now, will you state the conversation which Leonard had with McBurney in your presence?

The Witness: He said they were having a little trouble, and for us to go around the block and serve a couple more stops, and then come back. And that was the extent of the conversation.

By Mr. Constantine:

Q. As a result of that conversation what happened?

A. We went on, we went down to Valley No. 2 to serve it.

Q. At that time did Mr. McBurney make a delivery to Valley No. 1?

A. No.

Q. Then when you got to Valley No. 2, did McBurney make a delivery?

A. No; there were some men there, so we went on then.
[fol. 250] We stopped and went on.

Q. Just answer this yes or no, please: Was there any conversation between you or McBurney and the men?

The Court: At Valley No. 2?

Mr. Constantine: Yes, your Honor.

The Witness: They said they were expecting a phone call, and for us to go on and come back later.

By Mr. Constantine:

Q. And did you go on?

A. We went on and served the rest of the route, and come back.

Q. Did you observe whether there was any picket sign at Valley No. 2?

A. There were some signs against the post there. But whether they were picket signs, or not, I wouldn't know.

Q. Then you and McBurney went on to make other deliveries?

A. We completed the route and then made Valley 1 and Valley 2.

Q. And then returned again to Valley 1, you said?

A. Yes.

Q. Did you make the delivery at Valley No. 1 the second time you went there?

A. Yes.

Q. Was Chet Leonard there?

A. I didn't see him.

Q. At least no one came up to speak to you or McBurney [fol. 251] at that time?

A. No.

Q. Then from Valley No. 1 where do you go?

A. We made Valley No. 2. They were the two we had to make.

Q. Were those men there when you returned to Valley No. 2.

A. No.

Q. Were the signs there?

A. No, I didn't see them.

Q. Who made the delivery at Valley No. 2?

A. McBurney made both deliveries. He has both stores on one route.

Q. That is, he went a second time to each store and made the delivery?

A. Yes.

Mr. Constantine: That is all.

The Court: May I ask a question?

You gave us the testimony, or, rather, you gave us the conversation, and you said that they said they were having a little trouble, "Go around the block and come back." Did they say what they meant by trouble?

The Witness: No, they didn't. I didn't ask. I mean, I was overhearing a conversation between the driver and—

The Court: Just having a little trouble?

[fol. 252] The Witness: Yes, just having a little trouble.

The Court: All right.

Cross Examination

By Mr. Stevenson:

Q. When you came back and made your deliveries at each store, there were no pickets there?

A. No, sir.

Mr. Stevenson: That is all.

Mr. Gould: No questions.

The Court: May this witness be excused?

Mr. Constantine: I have no more questions, your Honor.

The Court: The witness may be excused.

(Witness excused.)

BILL PARKER, called as a witness on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your name.

The Witness: Bill Parker.

Direct Examination

By Mr. Constantine:

Q. You live at 620 West Newmark in Monterey Park?

[fol. 253] A. Yes.

Q. Your occupation, please?

A. Milk salesman.

Q. For what company?

A. Pellissier Dairies.

Q. As part of your duties as milk salesman do you service the Thriftmart Market on Glendale Boulevard?

A. Yes.

Q. What do you bring there,—milk?

A. Yogurt.

Q. Yogurt?

A. Yes.

Q. Sometime in February of 1952, did you go to make a delivery at Thriftmart?

A. Yes.

Q. About when in February would that be, approximately?

A. Somewhere between the 21st and the 25th.

Q. Did you make delivery that day at that time?

A. No.

Q. Will you state to the court why you did not make the delivery?

The Court: May I ask a question?

Mr. Constantine: Yes, your Honor.

The Court: Did you take any milk to deliver?

The Witness: Yes.

[fol. 254] The Court: All right.

The Witness: I drove in the driveway, you service it from the front, I serviced it from the front, I don't know whether

everyone else does or not, and I stopped the truck and someone came up to the truck and told me not to serve the store. So I didn't argue with the guy, I drove out.

By Mr. Constantine:

Q. Was there any picketing of the store at the time?

A. Yes. Not in front of it.

Q. Where was the picketing?

A. Down at the end.

Q. Not at the customers—

A. It wasn't directly in front of the door.

Q. And one of the pickets told you not to make the delivery?

A. Yes.

Q. Did you leave?

A. Yes.

Q. Did you return and make a delivery that day?

A. No.

Q. Have you seen any picketing there since then?

A. About a month later.

Q. About a month later?

A. Yes.

Q. As a result of the picketing did you make the delivery?
[fol. 255] A. No, I didn't stop.

Q. What did you do?

A. I drove in the driveway and drove out.

Q. You have since made deliveries?

A. Yes, every Tuesday.

Q. And the times that you have made the deliveries, was there or was there not any picketing?

A. Not since. There was picketing there twice. Not since then.

Q. Those two times you did not make a delivery?

A. That's right.

Mr. Constantine: That is all.

Mr. Stevenson: No questions.

Mr. Gould: No questions.

The Court: You may step down.

Mr. Constantine: If your Honor please, the marshal told me that the witness Ross McBurney, who was the truck

driver accompanying Mr. Gerardi, is recovering from a serious operation, and will not be able to respond to the subpoena. I should like to have your Honor's permission to confer with counsel for a moment to see if I can stipulate with respect to Mr. McBurney's affidavit.

The Court: All right.

(Counsel conferring.)

Mr. Constantine: Counsel have been kind enough to [fol. 256] stipulate that if Mr. McBurney were present he would testify as the statements are in this affidavit, which I should like to offer and have marked first as Petitioner's Exhibit 1 in case No. 14141, and Plaintiff's Exhibit 1 in case No. 14142. Might it be so marked?

The Court: It may be received in evidence.

The Clerk: Received, then, as Petitioner's Exhibit 1 in both cases, your Honor?

The Court: Yes.

CHESTER H. LEONARD, called as a witness on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your name.

The Witness: Chester H. Leonard.

[fol. 257] Direct examination.

By Mr. Constantine:

Q. Your address?

A. 3814 Los Feliz Boulevard.

Q. Your occupation?

A. Business representative of Bakery Drivers 276.

Q. That is the respondent in case No. 14141, do you know?

A. I don't know.

Mr. Constantine: Can we stipulate that the union he has just referred to is the respondent in case No. 14141?

Mr. Gould: So stipulated.

Mr. Stevenson: So stipulated.

The Court: Such is the stipulation.

By Mr. Constantine :

Q. And can you briefly tell the court what your duties are as business agent or business representative?

A. I represent the members of our Local with the different bakeries, see that contracts are lived up to, and to see that everything is working smoothly; also if there is any picket lines, to help out on them or run them when necessary.

Q. Has your union made any efforts—has your union [fol. 258] done anything with respect to people who have purchased or do purchase Danish Maid products?

A. We had a picket line in front of the markets informing them.

Q. Apart from the picket line has your union done anything with respect to the owners or managers of those markets?

A. Wait, let me have that again, will you please?

Q. I will withdraw that.

Have you talked to any owner or manager of any markets about Danish Maid products?

A. Yes, I have.

By Mr. Constantine :

Q. Will you name some of the markets?

A. Well, there is the Thriftimart at Glendale and Silver Lake Boulevard, there is a manager in there we talked to.

Q. You personally talked to him?

A. Mr. Becker and I. Mr. Becker also is with the union. We talked to this manager about this merchandise of Danish Maid that was in there, and we asked him that we would like [fol. 259] him to get along without it. On two occasions we did that. One time they put it out, then they put it back in again.

Q. As a result of his putting it back in again did you or did your union do anything about that?

A. Dropped another line on it.

Q. What do you mean by "line"?

A. A picket line.

Q. And that is at the Thriftimart which the last witness has described?

A. From the dairy?

Q. Yes.

A. Yes.

Q. Do you recall—

A. I didn't see the gentleman from the dairy at all. There was some other picket there.

Q. Were you there at the time?

A. I must have been.

Q. Do you know whether any other trucks from any other suppliers of that market came up while you were there?

A. There was Swift & Company at one time. There was quite a few came up while we were there on the two different occasions.

Q. Did you or anyone from the picket line speak to any of the truck drivers, including the Swift truck driver?

A. Told them to make a few stops and then drop back [fol. 260] later on in the day, we thought maybe this dispute with Danish Maid would be cleared up.

Q. And what is the dispute with Danish Maid?

A. Being non-union.

Q. As a result of your picketing—take that back. What is the purpose of your picketing?

The Witness: To inform the public that the Danish Maid products was on the unfair list, and will you not patronize this, the Central Labor Council.

The Court: If you got on the picket line you would try to tell the whole country the story. Don't try to keep it a secret here. Speak up so we can hear you.

The Witness: That's it. Inform them that the Danish Maid goods is made and delivered by non-union people.

By Mr. Constantine:

Q. Was there any other purpose than that in your picketing?

A. I don't know how that would be answered,—is there [fol. 261] any other purpose.

Q. You know better than I if there is any other purpose.

A. Just to inform the public, not only the drivers, but the public, that the goods is not union.

Q. Which drivers are you referring to?

A. Any union driver.

Q. Was their picketing in any other place than Thrifti-mart?

A. That was the only one that I had charge of was Thriftimart. There were others, Roberts Markets, there was Boys Markets.

Q. Were you on the Boys Market—

A. Yes, I was in Monta Vista.

Q. You were not in San Gabriel?

A. No. I was in Monta Vista in Highland Park.

Q. Were you at the Valley Stores?

A. Yes, I was at the Valley Store when I talked to McBurney and Rocco Gerardi.

Q. Did you hear Rocco Gerardi here describe a conversation between you and McBurney?

A. That is what I told him, to go around the block and make a few stops, and come back later, we thought it would be all right by then.

Q. Did you tell him what would be all right by then?

[fol. 262] A. The dispute about the Danish Maid products.

Q. Did you call that to the attention of either McBurney or Gerardi?

A. Yes, I did.

Q. Did you talk to the manager of either Valley Store 1 or 2 about the dispute?

A. No, I had no conversation with either one of the managers.

Q. Do you recall any of the managers with whom you have had conversation other than Thriftimart?

A. There was Carl's Market manager on West 8th Street. That was the only one other than the Thriftimart.

Q. What was the conversation there?

A. That he had Danish Maid merchandise in his market, that it was non-union. Just like we told them at Thriftimart, the same thing.

Q. What was the same thing? Will you repeat the conversation?

A. That the merchandise was non-union, delivered by non-union drivers and non-union bakers, and we were going to do something about it.

Q. Did you tell him what you were going to do about it?

A. That we would put a line around his market.

Q. That is what you told him?

A. Sure.

[fol. 263] Q. Did you get around to putting the line around the market?

A. Oh, yes, we did. Carl's Market on 8th Street.

Q. How long did that line stay?

A. That one lasted quite a while. About from 9:00 to 12:00 that day.

Q. What caused you to pull the line off?

A. Mr. Brashears' boy came and took the merchandise out of the market.

Q. You were there when he took it out?

A. Yes, I believe it was his boy. It was someone from Danish Maid took it out.

Q. Would you remember by sight who it was?

A. No, I wouldn't, now.

Q. When the stuff was taken out you pulled the line off?

A. Yes.

Q. That is true, also of Thriftimart?

A. That's right.

Q. And what other stores?

A. Boys Market.

Q. That was in——

A. Highland Park. I was on that particular line, when they took the merchandise out the line was off.

Q. You had put a line up because there was Danish Maid [fol. 264] goods in there?

A. Yes.

Q. Had you called that to the attention of some official of that store?

A. Yes, we had two meetings with that party, two meetings with the Boys Market.

Q. This is the Boys Market in——

A. Highland Park.

Q. And you did put a picket line there?

A. We had the line up there about 10 minutes.

Q. And what happened at the end of 10 minutes?

A. They took the merchandise out.

Q. Do you recall whether it was someone from Capital or Danish Maid, or——

A. I didn't wait at Carl's Market to see who picked it up.

Q. Carl's Market?

A. I mean Boys Market. I didn't wait to see. They took the merchandise out and put it out in the back yard.

Q. Did you speak to any truck drivers at Boys Market?

A. Didn't have to. They saw the sign and kept going.

Q. Did you see truck drivers come by?

A. There was a few. But, as I say, the line was only on about 5 or 10 minutes.

Q. Where else did you personally established a picket line?

[fol. 265] A. That is the only ones I had, Boys and—

Q. You have now mentioned Boys, Thriftmart and—

A. —and Carl's.

Q. Those were the three that you had?

A. Yes.

Q. And at each place you withdrew the line after you were convinced that Danish Maid products had been withdrawn from the store?

A. That's right.

Mr. Constantine: I have no more questions.

The Court: What do you mean by "withdrawn"? Do you mean withdrawn from sale?

The Witness: That's right.

The Court: That is, taken off the shelves?

The Witness: Taken off the gondola they have in the market.

Cross examination.

By Mr. Stevenson:

Q. Mr. Leonard, do you recall sometime in March having a conversation with me with regard to the picketing of Danish Maid products, the Board action?

A. Was that in regard to not stopping the trucks any more?

Q. That's right.

[fol. 266] A. Yes.

Q. Were you informed at that time that a complaint had been filed with the Board?

A. Yes.

• • • • •

By Mr. Stevenson:

Q. Were you given any instructions with regard to stopping trucks at that time?

A. We were told not to stop any more of them; tell them to go in.

Q. That was true pending this Board action, court action?

A. Yes.

Q. Have you done that?

A. Yes, we have.

Q. Were you likewise told that the court here had asked [fol. 267] that we do not picket during the pendency of this action?

A. That's right. We haven't done any picketing since.

Q. Have you complied with that?

A. Yes.

Q. Do you intend to picket again just as soon as a decision is finished in this case?

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[fol. 268] The Witness: That is what we would like to do.

The Court: I assume that when you say you intend to picket, you mean the union?

The Witness: Yes.

The Court: Not you personally?

The Witness: No.

By Mr. Stevenson:

Q. You are waiting now merely to learn how, where, when, and what is legal and illegal?

A. That's right.

Mr. Stevenson: That is all.

Cross examination.

By Mr. Gould:

Q. Mr. Leonard, this picketing of these markets that you have just referred to took place in the early part of February, 1952; isn't that right?

A. Around the middle of February somewhere, I would

say, early part of February, the latter part. There were different occasions we had them, not the same day.

Mr. Gould: No further questions.

By Mr. Stevenson:

Q. By the way, have you picketed personally since the State Court handed down its injunction?

A. No, we haven't done any picketing.

Q. You haven't personally?

[fol. 269] A. No.

Q. You don't know whether any of the others did?

A. No, I wasn't there.

Mr. Stevenson: That is all.

Mr. Constantine: That is all.

(Witness excused.)

HENRY J. BECKER, called as a witness on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please, and state your name.

The Witness: Henry J. Becker.

Direct examination.

By Mr. Constantine:

Q. Your residence, Mr. Becker?

A. 342 West Atlanta Street, Altadena.

Q. Your occupation?

A. President and business representative of Bakery Drivers Local Union.

Q. I didn't hear the local number.

A. Bakery Drivers Local 276.

Mr. Constantine: We already have a stipulation, your Honor, that is the respondent in 14141.

[fol. 270] By Mr. Constantine:

Q. What are your duties as president and business representative?

A. I particularly take care of the organizing.

Q. As part of your duties, are you authorized to set up picket lines?

A. Yes.

Q. And have you set up any picket lines in connection with Capital Service, which produces Danish Maid products?

A. Yes.

Q. Where have you personally set those up?

A. I was in charge of the entire thing and set up these spots where the picket lines would be set up all the way through.

Q. And how would you determine where to set them up, that is, how would you know there was Danish Maid products sold at a particular place?

A. Well, the way we found that was by what we call tailing the truck and finding out where the merchandise was delivered.

Q. And then after you tailed the truck, would you or someone on behalf of the union speak to the store owner where the merchandise was delivered?

A. In most cases it was myself with some other person.

Q. Where did you speak to owners of stores, or what are the names of some of these stores where you spoke?

[fol. 271] A. I think I spoke to practically all of them; Dale's, the owners of Dale's Market, LaMar's, Valley Stores, Thriftimarts. I contacted the main office, inasmuch as there was 11 stores involved.

Q. Let's take Valley Stores. Did you speak to some one there?

A. Yes, I did.

Q. They are the Valley Stores referred to here as being in North Hollywood?

A. That's right.

Q. At which Valley Store did you speak,—1 or 2?

A. I spoke to both of them, but the first contact was made in the No. 1, store, which the gentleman that I spoke to, when I asked for the owner, said that he was a part owner and had a partner.

Q. Did you make any request of the store there with respect to Danish Maid products?

A. Yes, I asked for his co-operation in not using the

product, inasmuch as it was non-union, and until such a time we would ask him to not use it. And if it was settled and the people did sign a contract, we would notify him and it would be O.K.

Q. Do you recall about when that was?

A. At the start of this dispute, I don't know just exactly what the dates were.

[fol. 272] Q. Could you name the month?

A. I imagine it was in February when all this took place.

Q. February of this year?

A. Of this year, yes, sir.

Q. Did you set a picket line up at Valley No. 1?

A. I did.

Q. What was the purpose of the picket line?

A. The purpose of the picket line was to remove the non-union merchandise from the store, and in that particular instance that would be about it, remove the non-union merchandise from that store.

Q. How long did that picket line last at Valley No. 1?

A. From Valley No. 1 I immediately—after establishing that line, I immediately left and went over to Valley No. 2, so I don't know when they came to an agreement as to the removal of the merchandise.

Q. Did you speak to someone at Valley No. 2?

A. Yes.

Q. And what did you tell him there?

A. I made the same request of him, that he remove the merchandise.

Q. Do you know the position the man held in the store that you talked to?

A. He said that he was just a manager, had no authority [fol. 273] to either put anything in or take it out, but that he would contact the No. 1 store and see what his boss said about it.

Q. All right. Now, did you do any picketing at Valley No. 2?

A. There was never a picket line established at Valley No. 2.

Q. Did you have a picket sign with you?

A. We had the signs all ready to go, but after the conversation and the man was very nice about the whole thing

and was going to call the boss, we stood the signs up upside down against the post.

Q. Against the telephone pole?

A. Yes.

Q. That was outdoors?

A. That was outside.

Q. Why didn't you ever establish a picket line at Valley No. 2?

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The Witness: The reason I didn't establish it there is that it has never been the policy of this local union to just arbitrarily drop a picket line, and when the gentleman in [fol. 274] there said that he would call his boss and talk it over, I felt that he was entitled to that chance, and gave it to him.

By Mr. Constantine:

Q. What was the conversation that you had with that manager there?

A. That was practically the conversation. I asked him as an official of the local union to remove the product, and he said he would get in contact with his boss. And we just stepped outside and waited for that conversation to take place, and then he called me up to the phone and he said they had agreed to take the merchandise out of both stores, which didn't call for a picket line at that particular spot.

Q. So as a result of his stating to you that they would remove the Danish Maid products from their shelves, you did not establish a picket line at Valley No. 2?

A. That is right.

Q. Did you see them take it down from the shelves?

A. Yes.

Q. Did you go from there back to Valley 1, or did you go somewhere else?

A. I went back to Valley No. 1 to pick up the rest of the fellows, and then we went back to the office.

Q. You removed the picket line also at Valley No. 1?

A. I think the picket line was removed before I got there. I think Mr. Leonard, as soon as the agreement was reached all the way around, he took the line off over there.

[fol. 275] Q. Where else have you spoken to owners of stores not to use Danish Maid products?

A. The Arrow Market.

Q. Is Thriftimart one of them?

A. Thriftimart, Fitzsimmons, is the same thing.

Q. I have reference to Thriftimart on Glendale Boulevard, which has ben referred to here by another witness.

A. Mr. Leonard and I spoke to him before we established the line there.

Q. Who is "him"?

A. The manager.

Q. What was the conversation?

A. The conversations all followed the same trend, just that we were representing the Bakery Drivers Union, and *the* the idea was that we would like to have them remove the merchandise from the shelves as long as it was non-union.

Q. Did they remove the merchandise the first time you went there?

A. No, they didn't.

Q. And what did you do as a result of that?

A. I think that the same morning I established a line somewhere else, Mr. Leonard established a line at the Thriftimart on Glendale Boulevard.

Q. While there was picketing at Valley No. 1, did any trucks come to make deliveries to Valley No. 1?

[fol. 276] A. I was over at Valley No. 2.

Q. You didn't stay long—

A. I didn't, no.

Q. Did any trucks come along at Valley No. 2?

A. Yes.

Q. Do you know about how many?

A. The Barbara Ann man had already had about nine-tenths of his merchandise in, and was just taking a little in, and we told him to go ahead, that we hadn't decided whether the line was going on or not. And about the time he left the Weber man came along.

Q. Did you speak to the Weber man?

A. I asked him to take himself a little ride and come back, that we thought we could have this thing settled by the time he got back.

Q. You are referring now to the Weber bakery man?

A. The Weber bakery man, yes.

Q. Did he take that little ride?

A. He did.

Q. You don't know whether he came back, or not?

A. After we were gone I don't know who came, or who didn't.

Q. Was it you or some other official of your union who picketed the Boys Market at 120 East Valley in San Gabriel?
[fol. 277] A. I picketed it.

Q. Were you here when Mr. Engwall testified concerning that incident?

A. Yes.

Q. Was it about 7:30 that the picketing started there?

A. Approximately 7:30, a quarter to eight.

Q. And Mr. Engwall, also, said something about talking to some truck drivers on the dock, is that true?

A. That is true.

.

By Mr. Constantine:

Q. Did you talk to any truck drivers of other people who were coming to make deliveries to that market? I am talking about Boys Market No. 4 in San Gabriel.

A. After the line was established, I was taking care of the line, I walked around the front, the manager came out to me and he said, "They want to talk to you on the phone from the other market." And I said, "Well, I don't go through picket lines myself, it is against my principles, I [fol. 278] will go over to a public phone." So I went over to a public phone and Mr. Leonard had got the thing settled over at the main store in Highland Park, and I then took the line off of the one on Valley. After there was no picket line I went back on the dock, and as our bread drivers came in, I spoke to them, as an official of the union, which had nothing to do with what happened or didn't happen before or after the picket line, but merely as their representative.

Q. To these truck drivers?

A. Yes, that's right.

Q. You didn't speak to any truck drivers while the picket line was on?

A. I don't believe so. Most of our boys when they saw the line, they didn't even stop.

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By Mr. Constantine:

Q. Did any trucks come to make deliveries to that market while your line was up?

A. They came, but passed by without stopping.

Q. Do you know what companies' trucks they were?

A. Barbara Ann was one, Olsen Baking Company was one, and the other trucks, that I can't remember now.

Q. Did you personally have any conversation with the manager of that Valley Market No. 4 respecting Danish [fol. 279] Maid Bakery products?

A. Not concerning Danish Maid.

Q. Did you have any conversation with any official of that chain, of the Boys Market chain about Danish Maid products?

A. Prior to the day that the line was established I talked to Joe Goldstein over the telephone.

Q. Who is Joe Goldstein?

A. He is the practical head of the Boys Market. And I talked to him and asked him to remove the merchandise, at least two weeks before we put the line out.

Q. About when did you talk to him?

A. I don't know, whatever the date was that the line was there, it was approximately two weeks before that. I don't remember dates.

Q. And the conversation with him was what, with respect to Danish Maid products?

A. That they were non-union, and that they were un-organized, and that we would like to have him remove that product until such time as they did become organized or unionized.

Q. And you put the picket line up when you found out that they had not been removed from the shelves?

A. About two weeks later, yes.

Q. Were there any other stores where you picketed, other [fol. 280] than those that you have already mentioned?

A. The Thriftmart—they have three different names for those, it is all the same chain, the Fitzsimmons chain, but

some of them are Roberts, some are Thriftmart, and some are still Fitzsimmons. I can't remember which is which, but there was one at 8400 West Hollywood Boulevard or Sunset Boulevard.

Q. And the pattern was about the same, you spoke to the manager there?

A. Yes, the pattern was about the same. I think a Swift truck came through and we stopped him in the early stages.

Q. Did you put a picket line there?

A. We put a picket line there.

Q. How long after the picket line went up did you remove it?

A. When they agreed to remove the merchandise from the store.

Q. During the period the picket line was there did you talk to any truck drivers who came to make deliveries to that store?

A. We had a line on there twice. I don't remember. In the early stages we talked to the truck drivers, and in the latter stages, after we had told enough of them to go through, then everybody went through without even stop-
[fols. 281-283] ping and talking to us. So I wouldn't remember.

Q. You say you had put a picket line up there twice?

A. On two different occasions, yes.

Q. That is, after the first time you found that there was Danish Maid products, is that why you put it up the second time?

A. Danish Maid products went back; they were informed erroneously that an injunction had been issued, and they put the products back in, and we put a picket line back on them.

Q. As soon as you put the second picket line back on, what happened?

A. I think we put it on at 9:00 in the morning, right after the store opened, and I think just before the evening rush around 3:30, 4:00 o'clock, why, the manager came out and said, "Well, out they go."

Q. What did he say?

A. "We are taking the stuff out, out they go."

Q. So you took the picket line off?

A. Took the picket line off, yes.

Mr. Constantine: That is all.

The Court: I notice it is 4:00 o'clock, and we usually try to recess at 4:00 o'clock. I hoped to get through with this witness, but I don't anticipate I can. So we will recess to 10:00 o'clock tomorrow morning.

(At 4:00 o'clock p. m., an adjournment was taken until 10:00 o'clock a. m., Wednesday, May 28, 1952.)

[fol. 284] Los Angeles, California, Wednesday, May 28, 1952. 10:00 A. M.

The Clerk: No. 14141, Lebaron v. Bakery Drivers, and 14142, National Labor Relations Board v. Capital Service, et al; further proceedings.

The Court: You may proceed.

The Clerk: You are Mr. Henry J. Becker. You may be seated. You have been sworn.

Mr. Constantine: I have finished with the witness, your Honor, at the time we adjourned yesterday.

HENRY J. BECKER, called as a witness on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-examination.

By Mr. Stevenson:

Q. Mr. Becker, you were in charge of the picketing from the inception of this labor dispute, were you not?

A. Yes.

Q. And the picketing began in January or, rather, February, somewhere around the 11th?

A. Yes, somewhere in there.

Q. And has it continued—strike that.

During the month of February when you were picketing, what was the object of that picketing?

[fol. 285] A. Number one, to induce the market owner not

to use the merchandise; and, secondly, for the public not to use the merchandise.

Q. To appeal to the public not to buy it?

A. Yes.

Q. And to the market owner not to sell it?

A. That's right.

Q. And during the early period did you ask certain drivers not to deliver the product?

A. Yes.

Q. That they were delivering to the stores?

A. Yes.

Q. Did you discontinue that practice later on as the result of advice from your attorneys?

A. I did.

Q. And you have been picketing or you have picketed since the State Court injunction, have you not?

A. Yes.

Q. Do you intend to continue picketing in accordance with the rulings of this court with respect to your legal right to picket?

A. Yes.

Q. In cooperation with the other unions of the Teamsters organization?

A. Yes.

[fol. 286] Q. The Food Council?

A. Yes.

Q. Central Labor Council?

A. Yes.

Q. And other groups?

A. Yes.

Q. Is this firm on the unfair list of all those bodies?

A. Yes.

Mr. Stevenson: That is all.

Cross-examination.

By Mr. Gould:

[fol. 287] Now, is it not a fact, Mr. Becker, that the unions are not picketing entrances of the markets which are purely delivery entrances, they were not as of February 25, 1952?

The Witness: Well, the dates are not clear in my mind,

[fol. 288] but at the time that this affidavit was sworn to that was true, we were not picketing delivery entrances as of that time.

Q. Nor did you at any later time?

A. That's right.

Q. Nor was your union or any of the other unions associated with you in this endeavor asking, inducing or encouraging the employees of other employers not to make deliveries to any market that was being picketed?

Mr. Stevenson: Just a moment, please. At what time?

Mr. Gould: February 25, 1952.

The Witness: That's right.

By Mr. Gould:

Q. Nor at any other time?

A. No. Prior to that time we had stopped deliveries.

Q. But not after February 25?

A. Not after the 25th, no, sir.

Q. And as a fact, wherever any driver of any supplier to any market made any inquiry of you, you informed said driver that your appeal is addressed only to the customers of the market, and the public patronage of the markets?

A. At that time that was true.

Q. And also later?

A. And later.

Q. And that the drivers to whom you talked were urged to make their deliveries as usual at that time and later?

[fol. 289] The Witness: After that particular date, yes.

By Mr. Gould:

Q. When was the State Court injunction, sir, to which you refer?

A. I didn't refer to it. I don't know what date it was served.

Q. When was the last time that you did any picketing?

A. The last time was after—not mentioning any dates, because I don't keep track of things that way; the last I did any picketing was at the Market Basket at 40 North Santa Anita. It was after the injunction was issued, and my picture was taken.

[fol. 290] Q. And that was at the customer entrances of the market?

A. The front of the store, and the driveway alongside of it which could be "customer entrances," inasmuch as it leads to a parking lot, or the back door for deliveries.

Q. You in no way interfered with any deliveries to the market?

A. Not at that time, no.

Mr. Gould: No further questions.

Mr. Stevenson: Do you have anything further, Mr. Constantine?

Mr. Constantine: No.

By Mr. Stevenson:

Q. Do you intend in the absence of an injunction to picket with the other unions involved in this action, and to ask all drivers, if an injunction is denied in this court, or it is ruled that the Board does not have jurisdiction, to ask all drivers of all the unions not to make deliveries?

A. Yes, I do.

Mr. Stevenson: That is all.

Mr. Gould: May I, if your Honor please, follow up from that?

The Court: Yes.

By Mr. Gould:

Q. Mr. Becker, who is John M. Annand?

[fols. 291-293] A. The international representative of the Teamsters Union in this locality.

Q. What is his connection with the Joint Council of Teamsters?

A. He is the representative of the International in this area, and I imagine it would be more or less of a supervisory capacity over the Joint Council.

Q. And Mr. Annand gives you instructions, does he not?

A. No.

Q. Your local union is chartered by the International Union, is it not?

A. That's right.

[fol. 294] By Mr. Gould:

Q. Mr. Stevenson asked you, Mr. Becker, whether or not you stopped interfering with deliveries after the charges were filed at the Labor Board. Did you understand what charges he was talking about when you said that was when you stopped interfering with deliveries?

A. I imagine that the charges were filed, our attorney was notified, and he notified us to come to his office for legal instruction.

The Court: May I ask the witness a question?

Mr. Constantine: Yes, your Honor.

The Court: What do you mean by "charges"?

The Witness: That is what he is bringing out. I don't know what the charges are. I don't even know what this is all about.

The Court: Let's clarify what we mean by "charges."

Mr. Stevenson: I think I can clear it up.

The Court: Wait a minute. Maybe they don't want you to clear it up.

Mr. Gould: This witness has testified that they stopped interfering with deliveries after charges were filed at the [fol. 295] Labor Board.

The Court: That's right. And now he says he doesn't know what "charges" means, he doesn't know what he is talking about.

By Mr. Gould:

Q. How did you come to stop interfering with deliveries?

A. Our attorney called us into his office and said that under the circumstances, and whatever they might be, charges or so on, I don't know, but he said that it would be now the right thing to not stop deliveries.

And on advice of our attorney, which we always follow, we have done that.

Q. You know, do you not, that there is a complaint pending with the National Labor Relations Board concerning secondary boycott activities by your union?

A. To me it is hearsay. The lawyer told me yes, that there were. So I don't know whether there are or not.

Mr. Gould: No further questions.

Mr. Constantine: No further questions, your Honor.

The Court: You may step down.

Mr. Stevenson: Were you told that a complaint had been filed, Mr. Becker, at the time that you were given that advice?

The Witness: Some sort of complaint. The legal terms I don't understand.

[fol. 296] The Court: You may step down.

COLLOQUY BETWEEN COURT AND COUNSEL

May I clarify some matters, if I can, before you call your next witness?

I thought that I had the dates pretty well in mind, but something was said yesterday by one counsel that leads me to question my own computation.

According to my records the complaint, the original complaint was filed with the Labor Board on May 14, 1952.

Mr. Constantine: No, your Honor.

Mr. Gould: No, your Honor.

The Court: That is what your exhibit shows.

Mr. Gould: There is——

The Court: It was dated May 14. When was it filed?

That is what I was confused with yesterday.

Mr. Constantine: Exhibit 1 in case No. -141, your Honor, indicates that the charge was filed February 21, 1952.

The Court: What is Exhibit 3 in 14142? It says the complaint.

Mr. Gould: We can explain that to your Honor. The initiating document at the Labor Board is called a Charge. It is in the nature of an information.

The Court: Is that what you mean when you say "charges"?

Mr. Gould: Yes, your Honor. When a "charge" is filed, which was filed on February 21st——

The Court: Now, when was the Charge filed?

[fol. 297] Mr. Gould: February 21st. The procedure of the Labor Board is to assign that Charge to a Field Examiner for investigation, and after he makes his investigation he recommends certain action, or the Regional Director decides to do certain things.

In this particular case on May 14, 1952, a Complaint was

issued based upon the Charge which had been filed upon February 21st. A hearing will be held by a Trial Examiner of the National Labor Relations Board to determine whether the Complaint has been proved.

The complaint here, now, is in the nature of a pleading that we might have in this court, or in a Superior court, and an answer will be filed to this complaint, hearing will be held, and the Trial Examiner, who is a quasi-judicial officer, will make recommendations to the Board in Washington that the union be ordered to cease and desist from the activities that are charged in the complaint, if they are supported by the evidence.

The Court: All right. Then the action in the Superior Court was filed on February 21st?

Mr. Gould: On February 18th.

The Court: And then the action before Judge Hall was filed on the 21st?

Mr. Gould: Yes, that was filed on February 21st.

In other words, the State Court proceedings were instituted before any of the Labor Board charges or the damage action before Judge Hall.

The Court: All right. I just wanted to be sure because my understanding was that they were all filed at the same time, and yesterday you made a statement that indicated that wasn't so.

Mr. Gould: That's right. Your Honor would get that impression from reading the Board's complaint. But when you get down to specific dates, the dates are the ones that we have stated and the record shows that.

The Court: Does the Board agree that these are the proper dates, these are the correct dates?

Mr. Come: These are the correct dates, your Honor.

[fol. 302] The Court: All right. Now, call your next witness.

Mr. Constantine: Petitioner in -141 and plaintiff in -142 rests, your Honor.

The Court: Are you going to call any witnesses?

Mr. Stevenson: No, we have no witnesses, your Honor.

Mr. Hackler: Just one moment, please, your Honor, before entering on the intervenor's evidence, we would like to be heard briefly with respect to our motion to strike portions of his answer.

[fols. 303-328] You will recall that was taken under advisement and you indicated at the time——

The Court: You have been heard briefly. Denied. Call your witness.

Mr. Stevenson: At this time do we understand whether or not the witnesses here—whether or not the intervenor is to be confined to the question of the Board's jurisdiction. We don't think he is entitled——

The Court: I don't know just what the issues are that the intervenor is going to present to the Court. He is here, he is in court, I think he has a perfect right to present his theory to the court. The court may not agree with him, but he has a right to be heard.

[fol. 329] Now, whether or not there is a dispute, we have this—I assume there has been a dispute. I don't think there is any question but what the fundamental purpose, the purpose behind all these proceedings, is not to preclude the sale of Danish Maid products but to bring about the unionization of the bakery.

Mr. Stevenson: That is correct, your Honor.

The Court: I assume that is the main objective. These others are secondary objectives.

Now, we do have this showing that there was evidently a dispute of some kind. We have the placards that were used [fol. 330] by the pickets. The placard is addressed to the general public:

“To the Public Danish Maid Bakery products sold here are made and delivered by a bakery that is non-union and on the we do not patronize list * * *”

I don't know how anyone can more definitely state to the public that there is a labor dispute between labor and a non-union labor organization, than by saying they are on the do not patronize list, the products made are non-union. Although I won't go as far as the court did in New York by saying that it is necessary to show that there was a dispute between or involving Capital.

Mr. Gould says that the Act should read “the employees and the primary employer.”

The Act says “to induce or encourage the employees of any employer.”

I assume that "any" means any employer; it doesn't mean of the Capital.

It means any employer.

Now, we have a number of employers here; the people that operate the various stores, they are employers, certainly there is some evidence to establish the fact that they were encouraged or discouraged, something was done to encourage the employees of some employer; the drivers of the union trucks were discouraged, they didn't go through the picket line; the employees of the store were induced or [fols. 331-337] discouraged. The product was taken out of the stores.

So I am going to have to find that it is not necessary in this case to establish that there was any other labor dispute between the employees and Capital than appears in the record.

[fols. 338-339] Mr. Gould: Intervenor rests.

[fols. 340-368] The Court: I suggest that we recess to 2:00 o'clock this afternoon, and if you do not have any other testimony that you want to introduce then we will proceed with the arguments.

(Whereupon an adjournment was taken at 11:50 o'clock a.m. until 2:00 o'clock p.m. of the same day, Wednesday, May 28, 1952.)

[fol. 369] Wednesday, May 28, 1952, 2:00 P.M.

The Court: Now, supposing that the court would find that there is a labor dispute and it does affect commerce, isn't the next logical step to say that the Labor Board has jurisdiction, unless this is a field that was not preempted by Congress?

Mr. Gould: Yes. We would say with regard to express conduct that is in violation of the express language of Section 8(b)(4) the Board would have jurisdiction.

The Court: Do you think there is any merit to the issue here that although the charge was filed with the Labor Board back in February, 1952—do you intend to argue the fact that the Labor Board was negligent, careless, guilty of laches, that they lost jurisdiction because they didn't take any action?

Mr. Gould: We don't argue that for that purpose, your Honor. I would call it a make weight, only. We raised that [fols. 370-395] point only to show the court that the Labor Board in attempting to assert jurisdiction over all activity of labor organization is seeking to do that merely for the purpose of not carrying out its functions that would protect employers against even the secondary kind of boycott activities that are defined expressly in the statute. [fols. 396-397] The Court: We will recess to 10:00 o'clock tomorrow morning.

(Whereupon at 3:30 o'clock p.m. Wednesday, May 28, 1952, an adjournment was taken until Thursday, May 29, 1952, at 10:00 o'clock a.m.)

[fol. 398] Los Angeles, California, Thursday, May 29, 1952
—10:00 A. M.

The Clerk: Further proceedings in cases of Lebaron vs. Bakery Drivers Local Union 276, and National Labor Relations Board vs. Capital Service.

Mr. Hackler: We have only a couple of formal matters before resting. We have attached to our petition in case -42 some six exhibits which are all formal documents, charges, the court's decree, the court's opinion, and formal documents. While they have not been denied, the accuracy of those or the authenticity of them, so that there can be no question we want it to be clear that they are offered. In other words, Exhibits 1 through 6, inclusive, attached to— [fols. 399-402] The Court: Can't we do this, can't we have a stipulation that all the exhibits that are attached to all the pleadings can be considered by the court?

Mr. Hackler: So stipulated.

Mr. Stevenson: So stipulated.

[fol. 403] Mr. Gould: If counsel will stipulate as to the authenticity of the entire record in the Superior Court case, from which those exhibits that counsel is offering came, and will be introduced in evidence in the same manner as the exhibits to which they are referring, we will so stipulate, because we submit that the court should have everything before it, not just a part.

[fol. 404] The Court: Can't we stipulate that the entire

record can be considered in evidence in this case by reference?

Mr. Gould: We will so stipulate.

The Court: In other words, I don't think there is anything there——

Mr. Stevenson: We have no objection.

Mr. Hackler: No objection.

The Court: Either party can use the record in any way they want to as far as an appeal is concerned, if there is an appeal.

[fol. 405] Mr Gould: We are not waiving our objections to the proceedings by any stipulation that we enter into. Subject to our comparing the exhibits with the original record, we will stipulate as to their authenticity, and without waiving our objections to their materiality, competency, and relevancy in this proceeding.

The Court: Now, is there any other evidence that you think should be before the court, any other matters?

[fols. 406-498] GOVERNMENT RESTS

Mr. Hackler: I have a certified copy of the order of the court denying the motion to vacate, but I take it it is already received in our reference of a moment ago.

With that, if your Honor please, the government rests in both cases.

The Court: Do you rest?

RESPONDENT RESTS

Mr. Stevenson: Yes, your Honor.

The Court: Formally?

Mr. Stevenson: Yes, your Honor.

[fols. 499-501] The Court: We will stand at recess to 10:00 o'clock on Monday morning.

(Thereupon, at 2:55 o'clock p. m., Thursday, May 29, 1952, the hearing in the above-entitled causes was adjourned until Monday, June 2, 1952, at 2:00 o'clock p. m.)

fol. 502-558] Los Angeles, California June 2, 1952,
2:00 O'Clock, P. M.

The Clerk: No. 14142-HW Civil, National Labor Relations Board vs. Capital Service, hearing to settle findings of fact, conclusions of law and form of preliminary injunction; setting for trial; motion for stay of execution.

fol. 559] Mr. Gould: We will ask Congress to conduct an investigation. We have a congressional report on the activities of this Regional Board to bring before your Honor.

Mr. Hackler: I would like to say at this point if there is any contention of any misconduct, anything improper with respect to the handling of this case—

The Court: There is no evidence of any misconduct.

The Court: The only purpose of the hearing this afternoon was for the purpose of determining the form of the injunction. Instead of that, we have re-argued the case. I did not intend to go into the case, but just the question of the form.

fol. 560-663] I have signed the preliminary injunction, the findings of fact and conclusions of law in 14141, and I have also signed them in 14142. I have overruled the objections.

fol. 664] IN UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT—January 30, 1953

Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion filed.

[fol. 665] IN UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 13,416

CAPITAL SERVICE, INC., and G. BRASHEARS, etc., Appellants,

VS.

NATIONAL LABOR RELATIONS BOARD, Appellee

Appeal from the United States District Court for the
Southern District of California, Central Division

Before Denman, Chief Judge, and Orr and Pope, Circuit
Judges

OPINION—Filed January 30, 1953

DENMAN, Chief Judge:

This is an appeal by Brashears and Capital Service, Inc., hereafter Service, manufacturers of bakery products in non-union plants, and selling them to retail dealers merchandising such products in and around Los Angeles, California. The appeal is from a preliminary injunction of the district court¹ granted on the complaint of the National Labor Relations Board, hereafter called the Board, enjoining Service from "Enforcing or seeking to enforce, or in any other manner giving continued effect to or availing themselves of the benefits of, the preliminary injunction issued on April 7, 1952, by the Superior Court of California, Los Angeles County, in Case No. 595892; and from taking or applying for any further proceedings in said Superior Court the effect of which would be to enjoin or restrain the defendant labor organizations in Superior Court Case No. 595892 from engaging in peaceful picketing or other concerted activities affecting the customers of Capital Service, [fol. 666] Inc., and their suppliers, and which are carried on pursuant to a labor dispute with Capital Service, Inc."

¹ 28 U. S. C. § 1292 (1).

A. The boycott of the product of Service's bakers to restrain their opposition to and to compel their unionization is prohibited by Section 8(b)(1) of the Taft-Hartley Act.

One of the labor unions is the Bakery and Confectionery Workers International Union of America, Local No. 37, hereafter called the Bakery Union. This union is seeking to force the workers in Service's bakery manufacturing to join the Bakery Union. In this effort it was joined by a union organization, the Los Angeles Food Council and the Los Angeles Central Labor Council.

Their method of enforcing their demand for unionization of the Service's bakery workers was to persuade the public not to buy the products manufactured by Service's bakers by a secondary boycott of the sale of these products by retail food stores to which they were sold by Service. They established picket lines at the retail customers' entrances of the stores displaying placards stating:

"To the Public
 Danish Maid
 Bakery Products
 Sold Here Are Made
 And Delivered By
 a Bakery That Is
 Non-Union
 And On The
 We Do Not Patronize List
 of the
 Los Angeles Central Labor Council
 Los Angeles Food Council
 Joint Council of Teamsters' Union 42
 Bakery Drivers' Local 276
 Bakers' Local Number 37"

Against this the Superior Court in a suit brought by Service made its preliminary injunction providing:

"1. Including or seeking or attempting to induce any person to refrain from purchasing plaintiff's merchandise by picketing plaintiff's customers or prospective customers."

[fol. 667] The district court made its preliminary injunction restraining such a picketing boycott on the ground that such solicitation of the customers of the retail stores violated Section 8(b)(4)(A) of the Taft-Hartley Act and hence the state court had no jurisdiction to enjoin it. Service contends and the Board agrees, as do we, that this section of that Act does not cover such a boycott.

We think, however, that such a boycott to enforce unionization is prohibited by another section of the Taft-Hartley Act, Section 8(b)(1)(A). The pertinent portions of that section are: "(b)(1) It shall be an unfair labor practice for a labor organization to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7 of this title."

The rights guaranteed by Section 7 as they were in the Wagner Act are:

"Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

To these the Taft-Hartley Act significantly added the following right of employees:

". . . and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3) of this title."

The language of 8 (b) (1) (A) prohibiting restraint and coercion by a labor organization is the same in this regard as Section 8 (a) (1) providing for an Employer, that (a) "It shall be an unfair labor practice for an employer (1) to interfere with, restrain or coerce employees in the exercise of the rights guaranteed by Sec. 7 of this title."

The Supreme Court has held of Section 8(a)(1) of the Wagner Act, which is the same as in the Taft-Hartley Act, that the test whether the employer was violated the "re-[fol. 668] strain" provision is whether "the words or deeds . . . taken in their setting, were reasonably likely to have restrained the employees' choice and [whether] the employer may fairly be said to have been responsible for them . . ." *N.L.R.B. v. Link Belt Co.*, 311 U.S. 584, 599.^a It is inconceivable that the Taft-Hartley Act intended the identical words of 8(a)(1) and 8(b)(1) to have a different meaning when applied to a labor organization from that when applied to an employer. The Board should be vigilant to see that what was sauce for the goose under the Wagner Act^b is now sauce for the gander under the Taft-Hartley

Nothing could more strongly restrain Service's employees from retaining their non-union status or coerce them into joining the Bakery Union than stopping or making intermittent their employment by persuading the public to boycott the products of their work.

It is urged that weight should be given to a statement of Senator Taft in the following colloquy:

"Question: Suppose the union, instead of refusing to handle his goods in other plants which that union has organized, urges the general public not to buy products of non-union manufacturers?

"Answer: This is not forbidden by the act, since it is merely persuasion."

The Senator was evidently not informed of the Supreme Court's construction of the words "restrain and coerce" in both 8(a)(1) and 8(b)(1) in the *Link Belt* case and other decisions, *supra*. Wrongful peaceful persuasion by a union

^a Similarly, in *N.L.R.B. v. Virginia Electric Power Co.*, 314 U.S. 469, 477; *N.L.R.B. v. Ford*, 170 F. 2d 735, 738; *N.L.R.B. v. Bird Machine Co.*, 161 F. 2d 589, 590; *N.L.R.B. v. Winona Mills*, 160 F. 2d 201, 206.

^b As stated by Judge Learned Hand in *N.L.R.B. v. Kohler*, 130 F. 2d 503, 506.
Act.

is as effective as the wrongful peaceful persuasion of an employer. As seen, persuasion of the public not to buy the products of Service's employees is a most potent weapon in restraining them from or coercing them into unionization. As stated by Senator Ball:

" . . . Basically, the primary objective of the majority of jurisdictional strikes and secondary boycotts is *not the employer*, but the *employees* over whom [fol. 669] control is sought." (Emphasis ours.)

Cong. Record, Senate, May 12, 1947;

Leg. Hist. of the LMRA, Vol. 2, p. 1497.

And again:

" . . . The employees are the primary objective and the primary victims for secondary boycotts and jurisdictional strikes."

Cong. Record, Senate, May 9, 1947;

Leg. Hist. of the LMRA, Vol. 2, p. 1350.

There is no merit to the contention that because the House receded from a provision *specifically* covering such secondary boycotts, Congress intended them to be made legal for all purposes. We may assume the House knew of the Supreme Court and other decisions cited above on the words restrain and coerce in 8(a)(1) and 8(b)(1), and that under 8(b)(1) boycotts are not legal where, as here used to restrain or coerce employees.

B. The unions' attempt to deprive Service of its sale of its products to the retail stores by persuading its wagon drivers to cease delivering its bakery products to such stores.

This preliminary injunction of the district court restrained Service from availing itself of the following provision of the preliminary injunction of the Superior Court reading:

"2. Stationing or maintaining any pickets at or about the place of business of any of plaintiff's customers or prospective customers or threatening to do same."

One of the unions involved is Bakery Drivers Local Union No. 276, a branch of the American Federation of Labor, hereafter the Drivers Union. It was seeking a concerted refusal by the Service's delivery drivers from transporting Service's bakery products to the retail stores and likewise the retail stores' delivery wagons from delivering the bakery products to the retail customers. In this the Bakery Drivers Union was aided by the same unions as in the attempted boycott of the goods produced by Service's bakers.

Here the picket line was maintained at the rear entrances of the retail stores where the bakery products were handled [fol. 670] in and out of the stores. They displayed the same placards to the drivers of the delivery wagons as those displayed to the public at the retail customers' entrances. We agree with the Board that such conduct violated Section 8(b)(4)(A) of the Taft-Hartley Act providing:

“(b) It shall be an unfair labor practice for a labor organization or its agents—

“(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a *concerted refusal in the course of their employment* to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person [not an employee] to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . .” (Emphasis supplied.)

This section of the Act, unlike 8 (b) (1), makes it an unfair labor practice to induce the employees of an employer to engage in “concerted action in the course of their employment” to prevent any person from dealing in the goods of any *other* person. Here the Drivers Union is seeking to prevent the retail stores from buying Service's products. Such union encouragement of Service's drivers to make a “concerted refusal in the course of their employment”

respecting the handling of its products is entirely different in character from persuading the individual public buyers entering the stores to boycott such goods to force a unionization of Service's bakery manufacturing employees.

C. The question then arises whether, since both these acts of picketing are in violation of the Taft-Hartley Act, the state courts are excluded from attempting to enjoin such acts where prohibited by the State or federal law?

We think that the control by the federal tribunals is exclusive. 29 U.S.C.A. § 160 (a) of the original Act provided: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158) affecting commerce. This [fol. 671] power *shall be exclusive and* shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise." (Emphasis supplied.)

As amended by the Taft-Hartley Act, these two sentences remain save that the words "shall be exclusive and" are stricken, and the states given power of enforcement by agreement with the board in certain cases by adding the following proviso after the word "otherwise": "*Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

We construe this amendment as giving to a state a right of enforcement only by an agreement reached by it with the board. Here there was no such agreement.

The preliminary injunction is affirmed.

[File endorsement omitted.]

[fol. 672] IN UNITED STATES COURT OF APPEALS, NINTH
CIRCUIT

No. 13,416

[Title omitted]

ORDER UPON PETITION FOR REHEARING—March 9, 1953

Before: DENMAN, Chief Judge, and POPE and ORR, Circuit
Judges

It is ordered that on Friday, March 20, 1953, at 10 o'clock a. m., there be a further hearing in this case upon the contention made in the Labor Board's petition for rehearing that the Taft-Hartley Act gives the Board no power to seek such a preliminary injunction as was issued by the state court enjoining all the unions from "1. Inducing or seeking or attempting to induce any person to refrain from purchasing plaintiff's merchandise by picketing plaintiff's customers or prospective customers," and that nevertheless the state court has no power to issue it.

(S.) William Denman, Chief Judge; Wm. E. Orr,
Circuit Judge; Walter L. Pope, Circuit Judge.

[File endorsement omitted.]

[fol. 673] IN UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

ORDER ON REHEARING—March 20, 1953

Ordered rehearing of above cause presented by Mr. Morton Come, Attorney, National Labor Relations Board, counsel for respondent, and by Mr. Carl M. Gould, Attorney for petitioner,—Mr. John C. Stevenson for Teamster's Union, also being heard—and, on oral stipulation of said counsel, submitted to DENMAN, ORR, and POPE, Circuit Judges, with leave to counsel to file reply memorandum 7 x 3.

[fol. 674] IN UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

ORDER AMENDING OPINION—May 12, 1953

Ordered opinion filed January 30, 1953, be, and hereby
is amended.

[fol. 675] IN UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 13,416

Jan. 30, 1953, as Amended May 12, 1953

CAPITAL SERVICE, INC., and G. BRASHEARS, Etc., Appellants,
vs.

NATIONAL LABOR RELATIONS BOARD, Appellee

Appeal from the United States District Court for the South-
ern District of California, Central Division

OPINION AS AMENDED ON REHEARING—Filed May 12, 1953

Before: DENMAN, Chief Judge, and ORR and POPE, Circuit
Judges

DENMAN, Chief Judge:

This is an appeal by Brashears and Capital Service, Inc., hereafter Service, manufacturers of baker products in non-union plants, and selling them to retail dealers merchandising such products in and around Los Angeles, California. The appeal is from a preliminary injunction of the district court^a granted on the complaint of the National Labor Relations Board, hereafter called the Board, enjoining Service from "Enforcing or seeking to enforce or in any other manner giving continued effect to or availing themselves of the benefits of, the preliminary injunction issued on April 7, 1952, by the Superior Court of California, Los Angeles County, in Case No. 595892; and from taking or applying

^a 28 U.S.C. § 1292(1).

for any further proceedings in said Superior Court the effect of which would be to enjoin or restrain the defendant labor organizations in Superior Court Case No. 595892 from engaging in peaceful picketing or other concerted activities affecting the customers of Capital Services, Inc., and their suppliers, and which are carried on pursuant to a labor dispute with Capital Service, Inc."

Service had filed a charge with the Regional Director of the Board alleging the acts of the unions hereafter described and the Board has issued a complaint against the unions. The purpose of the preliminary injunction sought for and granted below is to hold the situation in the status quo until the Board determines whether it will consider Service's charge.

The complaint below for a preliminary injunction alleges a cause under Section 8(b)(4)(A) of the Act and describes the conduct of the labor unions in picketing the stores in which the goods manufactured by Service's employees were sold, hereafter considered, and states as a conclusion of law that the picketing and other activities of this labor organization at the retail stores, insofar as it was limited to acquainting ultimate consumers with defendant's non-union working conditions, was not an unfair labor practice.

As will be seen, the acts alleged and proved show that the unions did much more than acquaint the ultimate consumers of the goods manufactured by Service's employees of the latter's non-union status. They urged a boycott by the public of the employee-manufactured goods and successfully persuaded the retail sellers to cease selling such goods.

The Board assumes that the successful boycott of the goods manufactured by Service's employees, thus to a large extent restraining them from such manufacture and tending to coerce them to abandon their non-union status, is not an unfair labor practice within Section 7 of the Act. It nevertheless contends that the Act pre-empts to the federal government this field of consumer boycott to the exclusion of any rights of the states to regulate in that field.

We find it unnecessary to consider this contention of the Board since we regard the Board as having the power to consider the instant consumer boycott and on the facts hereafter shown to issue its cease and desist order, if in its discretion, it determines so to act.

A. *Jurisdiction by effect on interstate commerce.*

The reduction by the consumers' boycott and other acts of the unions of the amount of goods manufactured by [fol. 677] Service's employees necessarily reduces substantially the amount of materials used in such manufacture. The findings of fact by the court below show that during 1951 Service made purchases totaling approximately \$500,000. Of this amount, \$30,000 was received directly from sources outside California and \$175,000 was received indirectly from such sources. See *Wickard v. Filburn*, *infra*, on indirect effect on interstate commerce. Thus, if Service were to be put out of business, approximately \$205,000 worth of goods would cease flowing in interstate commerce. This is a substantial amount and not so slight as to bring into play the maxim of *de minimis*. See *N.L.R.B. v. Fainblatt*, 306 U.S. 601, 606; *Santa Cruz Co. v. N.L.R.B.*, 303 U.S. 453, 467; *N.L.R.B. v. Townsend*, 185 F. 2d 378, 383 (Cir. 9).

Nor does it matter that Service is essentially a local business, supplying bakery goods for stores in the Los Angeles area. In *Wickard v. Filburn*, 317 U.S. 111, 124-125, the Court stated:

"But even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect'."

Thus it is the factor of substantial economic effect upon interstate commerce and not the nature of the business that determines federal jurisdiction. As has been shown, there is such substantial economic effect present here. See *N.L.R.B. v. Denver Building & Construction Trades Council*, 341 U.S. 675, 683-685.

B. The boycott of the product of Service's bakers to restrain their opposition to and to compel their unionization is prohibited by Section 8 (b)(1) of the Taft-Hartley Act.

One of the labor unions is the Bakery and Confectionery Workers International Union of America, Local No. 37, hereafter called the Bakery Union. This union is seeking to force the workers in Service's bakery manufacturing to join the Bakery Union. In this effort it was joined by a union organization, the Los Angeles Food Council and the Los Angeles Central Labor Council.

Their method of enforcing their demand for unionization of the Service's bakery workers was to persuade the [fol. 678] public not to buy the products manufactured by Service's bakers by a secondary boycott of the sale of these products by retail food stores to which they were sold by Service. They established picket lines at the retail customers' entrances of the stores displaying placards stating:

"To the Public
 Danish Maid
 Bakery Products
 Sold Here Are Made
 and Delivered by
 a Bakery That Is
 NON-UNION
 and on the
 We Do Not Patronize List
 of the
 Los Angeles Central Labor Council
 Los Angeles Food Council
 Joint Council of Teamsters' Union 42
 Bakery Drivers' Local 276
 Bakers' Local Number 37"

Against this the Superior Court in a suit brought by Service made its preliminary injunction enjoining all the unions from:

"1. Inducing or seeking or attempting to induce any person to refrain from purchasing plaintiff's merchandise by picketing plaintiff's customers or prospective customers."

We think Congress has pre-empted this function to the National Labor Relations Board and that the state court

is without jurisdiction to issue such an injunction. Such a boycott to enforce unionization is prohibited by the Taft-Hartley Act, Section 8(b)(1)(A).

The pertinent portions of that section are: "(b)(1) It shall be an unfair labor practice for a labor organization to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7 of this title."

The rights guaranteed by Section 7 as they were in the Wagner Act are:

"Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain [fol. 679] collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

To these the Taft-Hartley Act significantly added the following right of employees:

"... and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3) of this title."

The language of 8 (b) (1) (A) prohibiting restraint and coercion by a labor organization is the same in this regard as Section 8 (a) (1) providing for an employer, that (a) "It shall be an unfair labor practice for an employer (1) to interfere with, restrain or coerce employees in the exercise of the rights guaranteed by Sec. 7 of this title."

The Supreme Court has held of Section 8(a) (1) of the Wagner Act, which is the same as in the Taft-Hartley Act, that the test whether the employer has violated the "restrain" provision is whether "the words or deeds . . . taken in their setting, were reasonably likely to have restrained the employees' choice and [whether] the employer may

fairly be said to have been responsible for them . . .”
N.L.R.B. v. Link Belt Co., 311 U.S. 584, 599.^b

It is inconceivable that the Taft-Hartley Act intended the identical words “restrain or coerce” of 8(a)(1) and 8(b)(1) to have a different meaning when applied to a labor organization from that when applied to an employer. As stated by Senator Taft, “The act for years has contained the provision:

It shall be an unfair labor practice on the part of an employer—

To interfere with, restrain, or coerce employees in the exercise of the rights to work and organize.

[fol. 680] “*All that is attempted is to apply the same provision with exact equality to labor unions.*” (Emphasis supplied.) Legislative History of Labor Management Relations Act, 1947, Vol. 2, 1207.

That the Board has sometimes, in enforcement cases, overlooked the possibilities of § (8)(b)(1)(A) is suggested by what was said in *Labor Board v. Rice Milling Co.*, 341 U.S. 665 at page 672. The Board should be vigilant to see that what was sauce for the goose under the Wagner Act is now sauce for the gander under the Taft-Hartley Act.^c

Nothing could more strongly restrain Service’s employees from retaining their non-union status or coerce them into joining the Bakery Union than stopping or making intermittent their employment by picketing with appeals to persuade the public to boycott the products of their work. The evidence shows that all of the picketed stores did cease to sell the products manufactured by Service’s employees. Here is more than an appeal to the *employees* to persuade *their* action. Here is successful economic coercion tending

^bSimilarly, in *N.L.R.B. v. Virginia Electric Power Co.*, 314 U.S. 469, 477; *N.L.R.B. v. Ford*, 170 F. 2d 735, 738; *N.L.R.B. v. Bird Machine Co.*, 161 F. 2d 589, 590; *N.L.R.B. v. Winona Mills*, 160 F. 2d 201, 206.

^cAs stated by Judge Learned Hand in *N.L.R.B. v. Kohler*, 130 F. 2d 503, 506.

to prevent them from exercising their right to work by diminishing the public consumption of the product of their work.

Such economic coercion is that stated by Senator Taft is summing up the bill to the Senate on May 2, 1947. "The effect of the pending amendment is that the Board may call the union before them, exactly as it has called the employer, and say, 'Here are the rules of the game. You must cease and desist from *coercing and restraining* the employees who want to work from going to work and earning the money which they are entitled to earn.' The Board may say, 'You can persuade *them* [that is, the employees not the public]; you can put up signs; you can conduct any form of propaganda you want to in order to persuade *them*, but you cannot, by threat of force or *threat of economic reprisal*, prevent them from exercising their right to work.' As I see it, that is the effect of the amendment."^d (Emphasis supplied.) Leg-[fol. 681]islative History of the Labor Management Relations Act, 1947, Vol. 2, p. 1206.

As stated by Senator Ball:

"... Basically, the primary objective of the majority of jurisdictional strikes and secondary boycotts *is not the employer*, but *the employees* over whom control is sought." (Emphasis ours.)

Cong. Record, Senate, May 12, 1947;

Leg. Hist. of the LMRA, Vol. 2, p. 1497.

^dThe Senator apparently had changed his mind since a prior statement:

"Question: Suppose the union, instead of refusing to handle his goods in other plants which that union has organized, urges the general public not to buy products of non-union manufacturers?

"Answer: That is not forbidden by the act, since it is merely persuasion."

He had not then recognized that urging the public not to buy employee-made goods was not mere persuasion of employees but the threat of economic reprisal on the employees by diminishing their employment through diminished public buying.

And again :

“ . . . The employees are the primary objective and the primary victims for secondary boycotts and jurisdictional strikes.”

Cong. Record, Senate, May 9, 1947 ;

Leg. Hist. of the LMRA, Vol. 2, p. 1350.

There is no merit to the contention that because the House receded from a provision *specifically* covering such secondary boycotts, Congress intended them to be made legal for all purposes. We may assume the House knew of the Supreme Court and other decisions cited above on the words restrain and coerce in (8)(a)(1) and (8)(b)(1), and that under 8(b)(1) boycotts are not legal where, as here used to restrain or coerce employees.

C. The unions' attempt to deprive Service of its sale of its products to the retail stores by persuading its wagon drivers to cease delivering its bakery products to such stores.

This preliminary injunction of the district court restrained Service from availing itself of the following provision of the preliminary injunction of the Superior Court reading :

“2. Stationing or maintaining any pickets at or about the place of business of any of plaintiff's customers or prospective customers or threatening to do same.”

[fol. 682] One of the unions involved is Bakery Drivers Local Union No. 276, a branch of the American Federation of Labor, hereafter the Drivers Union. It was seeking a concerted refusal by the Service's delivery drivers from transporting Service's bakery products to the retail stores and likewise the retail stores' delivery wagons from delivering the bakery products to the retail customers. In this the Bakery Drivers Union was aided by the same unions as in the attempted boycott of the goods produced by Service's bakers.

Here the picket line was maintained at the rear entrances of the retail stores where the bakery products were handled

in and out of the stores. They displayed the same placards to the drivers of the delivery wagons as those displayed to the public at the retail customers' entrances. We agree with the Board that such conduct violated Section 8(b)(4)(A) of the Taft-Hartley Act providing:

“(b) It shall be an unfair labor practice for a labor organization or its agents—

“(4) to engage in, or to induce or encourage the employees of any employer to engage in a strike or a *concerted refusal in the course of their employment* to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person [not an employee] to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . .” (Emphasis supplied.)

This section of the Act, unlike 8(b)(1), makes it an unfair labor practice to induce the employees of an employer to engage in “concerted action in the course of their employment” to prevent any person from dealing in the goods of any *other* person. Here the Drivers Union is seeking to prevent the retail stores from buying Service’s products. Such union encouragement of Service’s drivers to make a “concerted refusal in the course of their employment” respecting the handling of its products is entirely different in character from persuading the individual public buyers [fol. 683] entering the stores to boycott such goods to force a unionization of Service’s bakery manufacturing employees.

D. The question then arises whether, since both these acts of picketing are in violation of the Taft-Hartley Act, the state courts are excluded from attempting to enjoin such acts where prohibited by the State or federal law?

We think that the control by the federal tribunals is ex-

clusive. 29 U.S.C.A. § 160 (a) of the original Act provided: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158) affecting commerce. This power *shall be exclusive and* shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise." (Emphasis supplied.)

As amended by the Taft-Hartley Act, these two sentences remain save that the words "shall be exclusive and" are stricken, and the states given power of enforcement by agreement with the board in certain cases by adding the following proviso after the word "otherwise": "*Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

We construe this amendment as giving to a state a right of enforcement only by an agreement reached by it with the board. Here there was no such agreement.

The order for the preliminary injunction is affirmed.
[fol. 684] POPE, Circuit Judge, concurring.

I think especially important the statement in Judge Denman's opinion that "The purpose of the preliminary injunction sought for and granted below is to hold the situation in the status quo until the Board determines whether it will consider Service's charge." In adding this special concurrence I want to state that I think there is a most difficult question lurking in the background of this case and which it should be understood I, for one, do not now decide. Suppose that hereafter the Board should decide, as we have held it has a right to do, *Haleston Drug Stores v. National Labor Relations Board*, 187 F. 2d 418, that Capital Service's operations were so essentially local that their interruption would

not have the requisite effect on commerce.¹ If that time came it is possible that we might find difficulty in discovering any intention of Congress to the effect that where the Board thus exercises its uncontrolled discretion to leave a controversy and a business alone, State action is prohibited. See *Missouri Pacific Ry. v. Larabee Mills*, 211 U.S. 612, 623; *Kelly v. Washington*, 302 U.S. 1, 12.

[File endorsement omitted.]

[fols. 685-686] IN UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 13,416

CAPITAL SERVICE, INC., a Corporation, etc. et al., Appellants,

vs.

NATIONAL LABOR RELATIONS BOARD, Appellee

JUDGMENT—Filed May 12, 1953

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

[File endorsement omitted.]

[fols. 687-691] PRAECIPE FOR TRANSCRIPT OF RECORD (omitted in printing).

¹ Similar abstentions by the Board, in respect to an entire industry, have been recognized as within the Board's power. *National Labor Relations Board v. Atkinson*, 195 F. 2d 141, 144.

[fols. 692-700] DESIGNATION OF RECORD (omitted in printing).

[fols. 701-702] UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 13,416

CAPITAL SERVICE, INC., ETC., et al., Appellants,

vs.

NATIONAL LABOR RELATIONS BOARD, Appellee

Certificate of Clerk, U. S. Court of Appeals for the Ninth
Circuit, to Record, Certified Under Rule 38 of the Revised
Rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Court
of Appeals for the Ninth Circuit, do hereby certify the fore-
going Transcript of Record in Six Volumes: Volumes I, II
and III containing three hundred ninety-one (391) pages,
numbered from and including 1 to and including 391, and
Volumes, IV, V and VI, containing seven hundred (700)
pages, numbered from and including 1 to and including 700,
to be a full, true and correct copy of the entire record of
the above-entitled case in the said Court of Appeals, made
pursuant to request of counsel for the appellant, and certi-
fied under Rule 38 of the Revised Rules of the Supreme
Court of the United States.

Attest my hand and the seal of the said the United States
Court of Appeals for the Ninth Circuit, at the City and
County of San Francisco, State of California, this 14th day
of August, 1953.

Paul P. O'Brien, Clerk.

[fol. 703] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1953

No. —

CAPITAL SERVICE, INC., etc., et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF
CERTIORARI

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 9th, 1953.

Tom C. Clark, Associate Justice of the Supreme
Court of the United States.

Dated this 3rd day of August, 1953.

(1058)

BLEED THROUGH

BLURRED COPY

[fols. 704-706] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1953

No. 398

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed January 18, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted limited to the following question:

“In view of the fact that exclusive jurisdiction over the subject matter was in the National Labor Relations Board, *Garner v. Teamsters, Chauffeurs and Helpers, Local Union No. 776 (A. F. L.), et al.*, No. 56, October Term, 1953, decided December 14, 1953, could the Federal District Court, on application of the Board, enjoin Petitioners from enforcing an injunction already obtained from the State Court.”

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 707] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1953

No. —

[Title omitted]

STIPULATION RE PRINTING OF RECORD IN ABOVE ENTITLED
CAUSE—Filed September 11, 1953

It is hereby stipulated and agreed between Petitioners herein, by their attorneys, Hill, Farrer & Burrill, and Respondent, National Labor Relations Board, by Dominick L. Manoli, Assistant General Counsel of Respondent, pursuant to Rule 38, Section 8 of the Rules of the United States Supreme Court, that the following portions of the record



be printed as matter essential to consideration of the questions presented by the Petition for Writ of Certiorari to be filed in the above entitled cause.

1. Complaint for Injunctive Relief dated May 14, 1952, and all exhibits attached thereto.

2. Order to Show Cause dated May 15, 1952.

3. Minutes of the Federal District Court dated May 21, 1952.

[fol. 708] 4. Minutes of the Federal District Court dated May 26, 1952.

5. Minutes of the Federal District Court dated May 27, 1952.

6. Minutes of the Federal District Court dated May 28, 1952.

7. Minutes of the Federal District Court dated May 29, 1952.

8. Minutes of the Federal District Court dated June 2, 1952.

9. Findings of Fact and Conclusions of Law dated June 2, 1952.

10. Preliminary Injunction dated June 2, 1952.

11. Notice of Appeal to United States Court of Appeals for the Ninth Circuit dated June 2, 1952.

12. Praecipe for Transcript of Record filed June 2, 1952.

13. Minutes of the Federal District Court dated June 4, 1952.

14. Certificate of Clerk dated June 4, 1952.

15. Affidavit of Ross McBurney.

16. Certificate of Clerk to Supplemental Transcript of Record dated June 25, 1952.

17. Petition for Injunction, Federal District Court No. 14141-HW dated May 14, 1952 (omitting Exhibit "1" attached thereto which has previously been designated as [fol. 709] Exhibit "1" attached to the Complaint for Injunctive Relief in this action).

18. Answer to Petition for Injunction, Federal District Court No. 14141-HW, filed May 20, 1952.

19. Findings of Fact and Conclusions of Law, Federal District Court No. 14141-HW, dated June 2, 1952.

20. Preliminary Injunction, Federal District Court No. 14141-HW, dated June 2, 1952.

21. Affidavit of G. Brashears dated February 27, 1952, including all exhibits attached thereto.

22. Certificate of Clerk to Second Supplemental Transcript of Record dated July 11, 1952.

23. The following portions of the Reporter's Transcript :

Page	Line	to	Page	Line
16	3		16	17 (first 4 words only)
44	1		46	1
46	4		46	5 (ending with words "Union 276")
46	6 (commencing with words "Hearing petition")		46	9 (ending with word "Hearing")
46	10 (commencing with words "Motion of")		46	10
46	14		46	16
48	23		49	16
58	11		61	2
69	21		72	7 (omit last 4 words)
89	9		92	11

[fol. 710]

111	12	111	16
114	1	114	8
119	6	119	23
120	1	120	15
120	21	122	6
122	9	123	15
124	11	125	9
125	13	126	7
126	10	126	12
126	18	126	24
127	9	128	17
129	4	130	7
130	11	131	1
131	4	131	4
131	11	131	17
131	24	133	5
133	9	134	13
136	22	137	15
140	21	141	15
141	25	142	14
145	2	145	4
145	24	147	14
147	22	148	16
148	21	150	7
150	12	150	13

[fol. 711]

150	23	154	17
158	1	159	2
159	22	159	24
161	13	161	16
161	24	161	25
163	18	164	20
165	3	166	15
168	2	168	18
168	25	169	3
169	10	169	18

Page	Line	to	Page	Line
170	9		170	9
170	14		171	5
171	12		171	14
172	13		173	3
173	7		173	8
173	17		173	19
173	20		173	24
174	8		175	21
179	1 (last 4 words only)		179	6
179	1		179	1 (ending with words "I guess.")
179	14		180	15
205	24		206	12
207	4		207	10
210	1		210	7
[fol. 712]				
210	15		210	17 (first 6 words only)
213	24		214	6
214	16		219	6
222	11		229	1
248	15		248	21
249	1		249	9
249	13		256	9
256	16		257	9
257	12		258	11
258	17		260	6
260	15		266	4
266	16		267	6
268	2		273	17
273	23		277	9
277	17		278	14
278	18		281	26
284	1		286	12
287	19		287	21
287	25		288	24
289	15		291	13
294	6		298	13 (ending with words "your Honor.")
302	15		302	19
302	22		303	13
329	15		331	5 (first word only)
338	22		338	22
[fol. 713]				
340	15		340	21
369	10		370	6
396	11		396	15
398	1		398	5
398	19		399	6
403	6		403	12
404	7		404	16
405	12		405	17
405	24		406	9
499	16		499	20
502	1		502	1
502	8		502	11
559	10		559	16
559	22		560	3

24. The following proceedings in the United States Court of Appeals for the Ninth Circuit:

(a) Order directing filing of opinion and filing and recording of judgment, page 664 of Vol. VI of Certified Record;

(b) Opinion filed January 30, 1953, pages 665-671, Vol. VI of Certified Record;

(c) Order on Petition for Rehearing, page 672, Vol. VI of Certified Record;

(d) Order on Rehearing, page 673, Vol. VI of Certified Record;

[fol. 714] (e) Order amending opinion, page 674, Vol. VI of Certified Record;

(f) Opinion as amended on rehearing, May 12, 1953, pages 675-684, Vol. VI of Certified Record;

(g) Judgment, page 685, Vol. VI of Certified Record; and

(h) Praecept for transcript of record, pages 686-690, Vol. VI of Certified Record.

Dated this 31st day of August, 1953.

Hill, Farrer & Burrill, and Hyman Smith, by Carl Gold, Attorneys for Petitioners; National Labor Relations Board, by Robert L. Stern, Acting Solicitor General, Attorneys for Respondent.

[fol. 715] [File endorsement omitted.]

(2754)

IN THE

Supreme Court of the United States

October Term, 1953

No. **398**

CAPITAL SERVICE, INC., a California corporation, doing business under the fictitious firm name and style of DANISH MAID BAKERY, and G. BRASHEARS, individually and as president of said corporation,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

HILL, FARRER & BURRILL, and
HYMAN SMITH,

AND

Tenth Floor, 411 West Fifth St.,
Los Angeles 13, California,

Counsel for Petitioners.

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IN THE
Supreme Court of the United States

October Term, 1953

No.

CAPITAL SERVICE, INC., a California corporation, doing business under the fictitious firm name and style of DANISH MAID BAKERY, and G. BRASHEARS, individually and as president of said corporation,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF AP-
PEALS FOR THE NINTH CIRCUIT.**

*To the Chief Justice, and to the Associate Justices of
the Supreme Court of the United States:*

The Petitioners herein, Capital Service, Inc., and G. Brashears, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming a decision of the District Court of the United States for the Southern District of California, Central Division.

Jurisdiction.

Respondent alleges that this action arises under the National Labor Relations Act, as amended, 29 U. S. C., Supp. IV, Section 151, *et seq.*, hereinafter called "the Act," an Act of Congress regulating interstate commerce. The jurisdiction of the Federal District Court is invoked by Respondent under Section 1337 of the Judicial Code, 28 U. S. C., Supp. IV, and under Section 1651 of the Judicial Code, 28 U. S. C., Supp. IV.

Jurisdiction is conferred upon the United States Court of Appeals under the provisions of Section 1292 of the Judicial Code, 28 U. S. C., Supp. IV, which authorizes an appeal from an interlocutory order of the District Court of the United States granting an injunction.

Judgment of the United States Court of Appeals was entered on January 30, 1953. A petition for rehearing was filed by Respondent on March 2, 1953. Judgment, as amended on rehearing, was entered on May 12, 1953. The case is reported at 204 F. 2d 848.

On August 3, 1953, Justice Clark of the Supreme Court of the United States made and entered an order extending the time for filing this Petition for Writ of Certiorari to and including October 9, 1953.

The jurisdiction of this Court is invoked under Section 1254 of the Judicial Code, 28 U. S. C., Supp. IV, and Rule 38, Subsection 5(b) of the Revised Rules of the Supreme Court of the United States.

Statutes Involved.

The statute involved is the Labor-Management Relations Act of 1947, 29 U. S. C., Supp. IV, Section 151, *et seq.*, hereinafter called "the Act," which amends the National Labor Relations Act, and prescribes the rights and duties of employees, labor organizations and employers in their relations affecting commerce. Petitioners ask leave to refrain from reprinting at this point the numerous provisions of the Act which bear on the argument on the merits.

Statement of the Case.

Petitioners manufacture bakery products in a non-union plant under the firm name and style of Danish Maid Bakery, and sell them to retail dealers in and around Los Angeles, California. During 1951, Capital Service, Inc., hereinafter called "Service," made purchases totaling approximately \$500,000. Of this amount, \$30,000 was received directly from sources outside California, and \$175,000 was received indirectly from sources outside California. Thriftymart, Boys Valley Market No. 4 and Valley Stores No. 1 and No. 2 are retail food markets located in Los Angeles, California, which sell the bakery products of Service. In 1951 Thriftymart received merchandise directly from sources outside California valued at approximately \$300,000. In the same year Boys Valley Market No. 4 received directly from sources outside California merchandise valued at approximately \$800,000, and \$1,000,000 indirectly from sources outside of Cali-

fornia. In 1951, Valley Stores No. 1 and No. 2 received merchandise which originated from sources outside California valued at approximately \$250,000.

On April 14, 1949, a consent election was conducted by the National Labor Relations Board for the purpose of determining whether or not the production and maintenance employees of Service desired to be represented for the purpose of collective bargaining by Bakery and Confectionary Workers International Union of America, Local No. 37, American Federation of Labor, hereinafter called the "Bakery Union." By a vote of 52 to 15 the employees rejected representation by the Bakery Union. For a period of almost three years, there was no communication between the Bakery Union, or any other union, and the management and employees of Service.

On or about *February 13, 1952*, without notice to the management and employees of Service, in an apparent effort to force the production and maintenance employees of Service to join the Bakery Union and the driver employees of Service to join Bakery Drivers Local Union No. 276, American Federation of Labor, hereinafter called the "Drivers Union," the said Drivers Union with the support of the Bakery Union, the Los Angeles Food Council, the Joint Council of Teamsters' Union No. 42 and the Los Angeles Central Labor Council, commenced picketing, or threatened to picket, all of the sixteen retail food market customers of Service, including Thriftymart, Boys Valley Market No. 4 and Valley Stores No. 1 and No. 2, to induce the said retail customers to cease doing business with Service. The picketing, on occasion, was at the delivery entrances of the food markets; on other occasions, at the customer entrances. The placard carried by the pickets stated to the public that "Danish Maid

Bakery products sold here are made and delivered by a bakery that is non-union and on the 'We do not patronize' list" of the five unions supporting the boycott. As a consequence of the picketing, and threats of picketing, all of the retail customers of Service did cease doing business with Service.

On the 18th day of February, 1952, Service filed suit in the Los Angeles Superior Court against five unions, including the Bakery Union and the Drivers Union, and the retail food market customers of Service, wherein Service sought to prohibit the defendants therein from engaging in activities alleged to be in restraint of trade contrary to the California Cartwright Act (Cal. Bus. and Prof. Code, Sec. 16720, *et seq.*) by enjoining, among other activities, picketing of retail customers of Service.

On the 21st day of February, 1952, Petitioners filed a charge before Respondent, National Labor Relations Board, hereinafter sometimes called "the Board," alleging that the same unions that were defendants in the State Court action were engaging in unfair labor practices, as defined in Section 8(b)(4)(A) of the Labor Management Relations Act of 1947, by inducing union members to refuse to make deliveries to the retail customers of Service for the purpose of compelling said customers to refuse to do business with Service.

On April 3, 1952, the Superior Court for Los Angeles County held that secondary picketing is contrary to the public policy of the State of California and issued a preliminary injunction enjoining the Bakery Union and the Drivers Union from:

- “1. Inducing or seeking or attempting to induce any person to refrain from purchasing plaintiff's

[Service's] merchandise by picketing plaintiff's customers or prospective customers.

"2. Stationing or maintaining any pickets at or about the place of business of any of plaintiff's customers or prospective customers or threatening to do the same."

On *May 14, 1952*, Respondent, National Labor Relations Board, issued a complaint against the Drivers Union alleging that said union had violated Sections 8(b)(1)(A), 8(b)(4)(A) and 8(b)(4)(B) of the Act, and sought a Federal District Court injunction against said union under the authority of Section 10 of the Act.

On the same date, *May 14, 1952*, Respondent, National Labor Relations Board, filed the instant suit for injunctive relief against Petitioners. This suit and the suit against the Drivers Union were consolidated for trial.

Respondent, National Labor Relations Board, alleges in the complaint for injunctive relief in this action that it is vested with exclusive jurisdiction to determine whether concerted activities by labor organizations which affect commerce constitute unfair labor practices under Section 8 of the Act or conduct permitted and guaranteed by Section 7 of the Act; that no state court has power to enjoin activity within the Board's exclusive jurisdiction; that Petitioners and their market customers are engaged in interstate commerce; that Service filed a restraint of trade suit in the state court against the Bakery Union and the Drivers Union, and also a charge before the Board alleging that an unfair labor practice under federal law had been committed by the same union; that the state court action sought to enjoin the identical union activity involved in the unfair labor practice charge,

which activity is alleged to be within the exclusive jurisdiction of the Board.

Respondent, National Labor Relations Board, further alleges in this action that the Board concluded that the union conduct required restraint to only a limited degree, that is, restraint in the language of Section 8(b)(4)(A) of the Act; that the Board concluded that the picketing, and threats of picketing, insofar as they constituted an appeal to the public not to buy Service's goods and an appeal to the retail customers of Service not to sell Service's goods, constituted a guaranteed right under Section 7 of the Act; that the state court enjoined conduct found to be both lawful and unlawful under federal law by the Board; that the state court action invades the exclusive jurisdiction of the Board; that the Federal Act pre-empts the field of secondary picketing, permitting no state regulation; that the Board needs an injunction to prevent Petitioners from further irreparably invading the Board's exclusive jurisdiction and impairing the Congressional objective of a uniform national labor policy.

The prayer of the Board's complaint is for an injunction enjoining Petitioners from in any manner availing themselves of the state court injunction, and from taking any further proceedings in the state court action against the Bakery Union and the Drivers Union, and to require Petitioners to withdraw their state court action, and to request the state court to vacate its injunction.

On *June 2, 1952*, the United States District Court granted a preliminary injunction in favor of Respondent, National Labor Relations Board, and against the Drivers Union, enjoining said Drivers Union from violating Section 8(b)(4)(A) of the Act pending final adjudication

by the Board of the matters involved, and on the same date granted a preliminary injunction in this action in favor of Respondent, National Labor Relations Board, and against Petitioners, restraining Petitioners from in any manner availing themselves of the benefits of the preliminary injunction issued by the Superior Court for the County of Los Angeles and from taking any further proceedings in the state court action.

On the same date, *June 2, 1952*, Petitioners filed a notice of appeal in the United States Court of Appeals for the Ninth Circuit from the order of the District Court granting Respondents a preliminary injunction against Petitioners.

Upon a petition for rehearing filed by Respondent, the Court of Appeals for the Ninth Circuit on May 12, 1953, affirmed the order of the District Court granting the preliminary injunction. The case is reported at 204 F. 2d 848.

Statement of Questions Presented.

Does the National Labor Relations Board have statutory authority to prosecute this action for an injunction?

Where secondary picketing activity of a labor organization violates both the Federal Act and state law, does the National Labor Relations Board have exclusive jurisdiction of such activity, or may a state court take jurisdiction to enjoin violations of state law?

Has the National Labor Relations Board alleged and proved a cause of action in equity?

Reasons Relied Upon for Granting of Writ.

1. The power of the Supreme Court to grant a Writ of Certiorari is invoked pursuant to Rule 38, Subsection 5(b) of the Revised Rules of the Supreme Court of the United States in that the Ninth Circuit Court of Appeals has decided important questions of federal law which have not been, but should be, settled by the Supreme Court of the United States, and to permit such settlement by the Supreme Court, the Writ should be granted.

2. The power of the Supreme Court to grant a Writ of Certiorari is invoked pursuant to Rule 38, Subsection 5(b) of the Revised Rules of the Supreme Court of the United States in that the Ninth Circuit Court of Appeals has decided important questions of federal law in a way probably in conflict with applicable decisions of the Supreme Court of the United States.

3. The questions involved in this case are of great importance. At issue is the right of the states to regulate under state law secondary boycott activity affecting interstate commerce. Statutes of more than forty states regulating secondary boycott activity are affected and will be rendered null and void as applied to interstate commerce if the decision of the Ninth Circuit Court of Appeals is established as the law of the land.

4. Other critical questions of federal supremacy are at issue, such as the power of a Federal District Court to enjoin proceedings in a state court at the request of the National Labor Relations Board. This action of the National Labor Relations Board is without precedent. The importance of resolving conflicts between federal and state jurisdiction has been so often enunciated by the Supreme Court as not to require citation of authority.

5. The question as to whether or not union activity which violates both the Federal Act and state law is within the exclusive jurisdiction of the National Labor Relations Board has never been determined by this Court. However, this Court has granted a Petition for Writ of Certiorari to the Supreme Court of Pennsylvania in *Joseph Garner, et al. v. Teamsters, Chauffeurs and Helpers Local Union No. 776, et al.*, No. 773, June 15, 1953, U. S., 97 L. Ed. (Adv.) p. 1062, where the same issue is made the basis of the petition.

Conclusion.

For the foregoing reasons, and for the reasons set forth in the Brief in support of this Petition presented herewith, Petitioners pray that this Petition be granted and that the aforesaid questions be determined by this Court upon the granting of a Writ of Certiorari herein.

Respectfully submitted,

CARL M. GOULD for
HILL, FARRER & BURRILL,
and
HYMAN SMITH,
Counsel for Petitioners.

Certificate of Counsel.

I, the undersigned, Carl M. Gould, Counsel for Petitioners herein, hereby certify that in my judgment and opinion the foregoing Petition for a Writ of Certiorari is well founded, and that it is not interposed for purpose of delay.

CARL M. GOULD

IN THE

Supreme Court of the United States

October Term, 1953.

No.

CAPITAL SERVICE, INC., a California corporation, doing business under the fictitious firm name and style of DANISH MAID BAKERY, and G. BRASHEARS, individually and as president of said corporation,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

The statements in the Petition for Writ of Certiorari presented herewith with regard to the paragraphs entitled "Jurisdiction," "Statutes Involved," "Statement of the Case," and "Statement of Questions Presented," are incorporated by reference thereto. This case is reported at 204 F. 2d 848.

Summary of Petitioners' Argument.

1. The National Labor Relations Board does not have statutory authority, express or implied, to prosecute this action for an injunction.

2. The union activity in this case had a dual purpose: (1) to coerce the employees of Petitioners in violation of their Section 7 rights under the federal Act; (2) to ille-

gally restrain the trade of Petitioners in violation of the California Cartwright Act. Under the authority of this Court's decision in the *Giboney* case, 336 U. S. 490 Petitioners filed suit in the state court to enjoin the unions from illegally restraining the trade of Petitioners in violation of California law. Respondent has successfully enjoined Petitioners from prosecuting their restraint of trade suit in the state court, the federal courts holding that Respondent has exclusive jurisdiction under Section 10(a) of the federal Act. The lower federal courts are in error in holding that Respondent has exclusive jurisdiction, for the reason that Section 10(a) of the Act is intended only to preclude a state administrative agency, *not a state court*, from taking jurisdiction under state law over conduct which amounts to an unfair labor practice under the federal Act.

3. The National Labor Relations Board has not alleged or proved a cause of action in equity for the following reasons:

(a) The Board has not alleged and proved irreparable injury which is clear and imminent;

(b) The Board has not brought itself within the provisions of Section 2283, Title 28, U. S. C.;

(c) The District Court abused its discretion in refusing to weigh the equities in the case under the theory that the Board was entitled to the injunction as a matter of right;

(d) The Federal District Court abused its discretion in refusing to apply the principle of the *Ledbetter Erection Company* case, 97 L. Ed. (Adv.) p. 127, which is designed to permit state court action to proceed to final decision in the state courts.

ARGUMENT.

I.

The National Labor Relations Board Does Not Have Statutory Authority to Prosecute This Action for an Injunction.

Where Congress passes an act empowering administrative agencies to carry on governmental activity, the power of these agencies is circumscribed by the authority granted. *Stark v. Wickard*, 321 U. S. 288, 309, 88 L. Ed. 733, 748 (1943), and cases there cited; accord, *N. L. R. B. v. Highland Park Manufacturing Company*, 341 U. S. 322, 95 L. Ed. 969, 977 (1950).

Congress has not granted to the National Labor Relations Board authority to bring this action for injunction. The only authority granted the Board to obtain injunctions in the Federal District Court is found in Section 10 of the Act which empowers the Board to prevent any person from engaging in any unfair labor practice affecting commerce. The extent of the Board's power to prosecute actions for injunction, therefore, is limited to suits involving unfair labor practice charges, as defined in Section 8 of the Act. Petitioners are not charged with any unfair labor practice under Section 8 and it follows that the Board is without power to bring this action.

To imply power in the Board to bring this action is not warranted, as Petitioners' conduct, if unlawful, may be redressed under the Act itself. It has been the contention of the Board throughout this entire proceeding that

secondary picketing activity, which is not proscribed by Section 8 of the Act, is a guaranteed right under Section 7 of the Act. If this contention of the Board is sound, the Petitioners are guilty of an unfair labor practice in successfully enjoining in the state court the exercise of such a right. If the unions involved were aggrieved by the Petitioners' denial of their alleged rights under Section 7 of the Act, the procedure to follow was for the unions to file an unfair labor practice charge with the Board. The provisions of Section 10 of the Act then come into operation.

The Board cannot use its own initiative, however, in respect to charging unfair labor practices (*N. L. R. B. v. Hopwood Retinning Company*, 98 F. 2d 97 (1938); accord, *Consumers Power Company v. N. L. R. B.*, 101 F. 2d 38 (1940)). Yet that is exactly what the Board has done indirectly in this action. There are innumerable unfair labor practices that are not redressed for the reason that no charge is filed with the Board. That affords no opportunity for the Board on its own initiative to institute court action to remedy the situation, nor is it a basis for the Board's action in this case, which action is without precedent. The Federal District Court erred in not dismissing this action on the ground that the National Labor Relations Board does not have statutory authority to bring this action for injunction.

II.

The National Labor Relations Board Does Not Have Exclusive Jurisdiction of Secondary Picketing Activity Which Violates Both the Federal Act and State Law, and a State Court Has Jurisdiction to Enjoin Violations of State Law.

Under long-established principles of federal supremacy, the states are not excluded from regulating concerns engaged in interstate commerce unless Congress has clearly manifested an intent to preclude state legislation, (*Napier v. Atlantic Coast Line Railroad Co.*, 272 U. S. 605, 71 L. Ed. 432, 438 (1926)), or the repugnance or conflict of state law with the federal law is so direct and positive that the two acts cannot be reconciled or consistently stand together. *Kelly v. Washington*, 302 U. S. 1, 82 L. Ed. 3, 10 (1937). No such Congressional intent and no such conflict exists between federal and state law involved in this case.

In the absence of an expressed Congressional intent, this Court has been faced on several occasions with the task of defining the area within which state regulations may operate as applied to companies engaged in interstate commerce. This Court has passed upon this question in some ten leading cases. Of these cases, five have upheld the validity of state action, and five have struck down state action as being in conflict with the provisions of Federal law guaranteeing and protecting labor union activities.

This Court has sustained the validity of state action in the labor relations field even though its application included activities within federal jurisdiction, in the following cases:

- International Union U. A. W. v. W. E. R. B.*,
336 U. S. 245, 93 L. Ed. 651 (1949) (referred
to as the *Briggs-Stratton* case);
- Algoma Plywood & Veneer Co. v. W. E. R. B.*,
336 U. S. 301, 93 L. Ed. 691 (1949) (referred
to as the *Algoma* case);
- Allen-Bradley Local U. E. R. M. W. v. W. E. R. B.*,
315 U. S. 740, 86 L. Ed. 1154 (1941) (referred
to as the *Allen-Bradley* case);
- Lincoln Fed. L. U. v. Northwestern I & M Co.*,
149 Neb. 507, 31 N. W. 2d 477, affirmed 335
U. S. 525, 93 L. Ed. 212 (1948) (referred to
as the *Lincoln* case);
- Railway Mail Assn. v. Corsi*, 326 U. S. 88, 89 L.
Ed. 2072 (1944) (referred to as the *Railway
Mail* case).

This Court has decided that state action must fall where it is in conflict with the federal legislation, in the following cases:

- Hill v. Florida*, 325 U. S. 538, 89 L. Ed. 1782
(1944);
- Bethlehem Steel Co. v. N. Y. L. R. B.*, 330 U. S.
767, 91 L. Ed. 1234 (1947);
- LaCross Telephone Corp. v. W. E. R. B.*, 336 U.
S. 18, 93 L. Ed. 463 (1949);
- Amalgamated Assn. v. W. E. R. B.*, 340 U. S.
383, 95 L. Ed. 364 (1951);
- International Union v. O'Brien*, 339 U. S. 454,
94 L. Ed. 978 (1950).

The answer to the issues raised in the instant case may be found in the answer to the following question: Can the states of the United States today pass laws regulating secondary boycott activity affecting interstate commerce where they are not in conflict with federal legislation and federal policy? If the answer is yes, then the state courts can regulate secondary boycott activity under the doctrine of the *Hughes* case, 339 U. S. 460, 94 L. Ed. 985 (1950), and the action of the Los Angeles Superior Court was proper.

More than 40 states have laws regulating various phases of secondary boycott activities. In *Carpenters and Joiners Union v. Ritter's Cafe*, 315 U. S. 722, 86 L. Ed. 1143, 1148 (1942), this Court observed that in forbidding the conscription of neutrals into an industrial dispute, Texas represents the prevailing, and probably the unanimous, policy of the states. If the Board prevails in this action, statutes in these more than 40 states will be rendered null and void as applied to interstate commerce. Furthermore, the remaining states which do not have such statutes will be prohibited from passing legislation regulating secondary boycott activity. The State of Arizona, for example, which on November 4, 1952, voted to abolish all secondary boycott activity within the state, has engaged in futile and ineffectual action if the Board position is upheld.

Secondary picketing, involving as it does the conscription of neutrals into a labor dispute, breeds breaches of the peace and disturbances detrimental to the public interests. Congress in enacting the federal law was aware that the states have an interest in the problem and are acting to deal with it. It cannot be assumed that Congress intended to deny to the states the power to deal with

the causes as well as the consequences of this type of activity. If Wisconsin could validly regulate union activity to the extent that it did in the *Briggs-Stratton* case, certainly California is not encroaching upon federal labor policy by forbidding picketing of employers who have no "nexus" with the real dispute between the primary parties.

Recent state court decisions support Petitioners' position that the state courts may exercise jurisdiction in the field of labor relations under state law, even though the federal law is "applicable." See *Goodwin, Inc. v. Hagedorn*, 303 N. Y. 638, 101 N. E. 2d 697 (1951), *aff'd on rehearing* 102 N. E. 2d 833 (1951); *Ex parte Henry*, 147 Tex. 315, 215 S. W. 2d 588 (1950); *Kincaid Webber Motor Company v. Quinn*, 362 Mo. 368, 241 S. W. 2d 886 (1951); *Wortex Mills, Inc. v. Textile Workers Union*, 369 Pa. 359, 85 A. 2d 851 (1951); *Royal Cotton Mill Company, Inc. v. Textile Workers Union*, 234 N. C. 545, 67 S. E. 2d 755 (1951).

In *Sommer v. Metal Trades Council*, 40 A. C. 396, March 10, 1953, the California Supreme Court held that in a labor dispute affecting interstate commerce the federal law deprives the state court of jurisdiction to grant relief under state law only if the state law is inconsistent with the federal law. It is there held that, even though the labor activity is within the jurisdiction of the National Labor Relations Board, the state court nevertheless has power to enjoin labor activity under state law. In the *Sommer* case, *supra*, the dissenting members of the court relied heavily on the decision of the Ninth Circuit Court in this case, for the proposition that a state court has no jurisdiction to enjoin activities which are within the jurisdiction of the National Labor Relations

Board. The decision of the Ninth Circuit Court in this case was, inferentially at least, rejected by the majority of the California Supreme Court.

In *Carpenters & Joiners Union v. Ritter's Cafe, supra*, 315 U. S. 722, 86 L. Ed. 1143 (1941), this Court held that a state may, consistently with the constitutional right of free speech, prohibit peaceful secondary picketing under a state restraint of trade statute. In *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490, 93 L. Ed. 834 (1949), this Court held that Missouri may enjoin peaceful secondary picketing which is carried on in violation of the state anti-trade restraint statute.

The doctrine that a state may restrain picketing for a purpose found to be unlawful under state law was affirmed in *Building Service E. I. U. v. Gassam*, 339 U. S. 532, 93 L. Ed. 1045 (1950), and *International Brotherhood v. Hanke*, 339 U. S. 470, 94 L. Ed. 995 (1950).

In *Hughes v. Superior Court*, 339 U. S. 460, 94 L. Ed. 985 (1950), this Court upheld a state injunction based upon a rule of public policy derived not from a statute, but from common law principles, declaring that it is immaterial whether the state's labor policy is expressed by the state's judicial organ or by the legislature.

With the above cited cases expressly in mind, Petitioners filed an action in the state court seeking to enjoin the secondary picketing activity engaged in by the unions as being contrary to the public policy of the state under its restraint of trade statute.

Petitioners' state court action comes within the principles of the cases cited above, and the Los Angeles Superior Court had the constitutional power to enjoin sec-

ondary picketing held to be contrary to the public policy of the State of California.

The National Labor Relations Act has no application whatever in a matter involving no legitimate labor objective or labor dispute. There can be no unfair labor practice where there is no labor dispute. *S-M News Co. v. Simons*, 279 App. Div. 364, 21 Labor Cases 66775 (1952); compare *Mountain States Div. No. 17 v. Mountain States Telephone & Telegraph Co.*, 81 Fed. Supp. 397 (1948), aff'd 193 F. 2d 470 (1951).

In the *S-M News Co.* case, *supra*, an interstate employer brought an action in the state court alleging that the defendant union prevented, by work stoppages, the S-M News Company from transferring certain delivery routes from certain of its delivery agencies to other agencies because relatives of the union president had interests in the agencies to which such routes were previously assigned. The defendant union argued that the state court did not have jurisdiction of the action, that exclusive jurisdiction was vested in the National Labor Relations Board under the Labor Management Relations Act of 1947 for the reason that a reading of the complaint in the state court action disclosed that there was an unfair labor practice involved on the part of the union under Section 8 of that statute. The New York Appellate Court said:

"Clearly the gravamen of the present complaint is that no labor activity is involved in defendant's action, but an unlawful attempt is being made by one connected with the union to use the power of the union for selfish and personal aggrandizement of individuals not connected with labor. If this is

the case, then this is not a labor dispute at all and no labor practice is involved but the strength of labor is being misdirected to an activity in restraint of the freedom of contract by individuals who happen to be able to control and direct labor's power.

"The Taft-Hartley Act was never intended to be used as a cloak for such unlawful conduct. It was an act to regulate labor controversies, not one to aid individuals to commit extortionate or other unlawful acts.

". . . Plaintiff has presently, at least, established that no such labor dispute is involved. The federal statute could have no application whatever in a matter involving no legitimate labor objective or labor controversy.

* * * * *

". . . We think it clear that there is no repugnance or conflict here between the federal act cited and the exercise of jurisdiction by this court in these circumstances. There is no suggestion in the federal act that it has pre-empted the field in relation to the enjoining of unlawful conduct such as here complained of."

The *S-M News Co.* case, *supra*, is remarkably similar to the case at bar. The case stands for the proposition that the National Labor Relations Act is not applicable unless a bona fide labor dispute is involved. The case stands for the further proposition that a state court is not deprived of jurisdiction to grant injunctive relief even though a portion of the allegations of the complaint might, if considered alone, be considered to set forth an unfair labor practice as defined in the National Labor Relations Act. Directly in point is the statement of the

court that a state court is not deprived of jurisdiction to grant injunctive relief where no labor dispute is involved, since there can be no unfair labor practice under the federal Act where there is no labor dispute. Petitioners' complaint in the state court is based on an illegal restraint of Petitioners' trade under the state anti-trust statute. The parties are different and the issues are different in the state action. It is based upon the proposition that there is no genuine labor dispute involved between Petitioners and the unions. If this is true, the state court has jurisdiction to grant injunctive relief, as the National Labor Relations Act is inapplicable.

The state court action is in its preliminary stages. No trial on the merits has been held. If and when a trial on the merits is held, we submit that the Superior Court will find that an illegal conspiracy exists to restrain Petitioners' trade, and that there is no bona fide labor dispute. Yes Respondent seeks to deny Petitioners the right to proceed in the state courts and prove that the activity of the unions was for an illegal object under state law. If Petitioners are permitted to prove this fact in the state action, namely, that no genuine labor dispute exists, the National Labor Relations Act is not applicable and Respondent has no jurisdiction.

Whether or not Respondent has jurisdiction in this case depends upon whether or not a bona fide labor dispute exists between the union and Petitioners. If the activities of the union have for their objective the illegal restraint of Petitioners' trade, a restraint of trade statute, either federal or state, is applicable, not a labor relations statute. Before the National Labor Relations Act is applicable so as to confer jurisdiction on the Board,

the bona fide objective of the union must be in furtherance of some legitimate labor objective as defined in the federal Act. Petitioners have been denied their right to prove in the state court that the objective of the union activity was designed to illegally restrain the trade of Petitioners within the meaning of the California anti-trade statute.

Petitioners submit that they seek relief in the state court for activity which violates state law and not federal law, that the facts alleged in the state court action do not constitute a labor dispute under either state or federal law, and that, *since there is no labor dispute, the state court has exclusive jurisdiction of this matter.*

For the purpose of this suit, it may be assumed that Section 10(a) of the Act establishes that state labor relations boards may not take jurisdiction of unfair labor practice charges under the provisions of state labor relations acts which are identical to the federal Act. We are left with the problem of whether or not Section 10(a) precludes a *state court* from taking jurisdiction under state law, common or statutory, over conduct which amounts to an unfair labor practice under the federal Act. This Court has previously granted a petition for writ of certiorari in the case of *Joseph Garner, et al. v. Teamsters, Chauffeurs and Helpers Local Union No. 776, et al.*, No. 773, June 15, 1953, U. S., 97 L. Ed. (Adv.) p. 1062, to determine this question. The argument that follows is drawn in part from Petro, Participation by the States in the Enforcement and Development of National Labor Policy, Notre Dame Lawyer, Vol. XXVIII (1952).

Section 10(a) of the Act provides as follows:

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

This section *does* say that the power of the Board to prevent the unfair labor practices listed in Section 8 is not to be affected by *any* other means of adjustment or prevention. But the section *does not* say that the Board is exclusively empowered to hear and decide all cases involving conduct which amounts to unfair labor practices listed in Section 8. The reason that it does not is that Section 10(a) was never intended to exclude state court proceedings. At the time that this section was written into the Wagner Act, the Act contained no restrictions on union conduct, and there was no state common or

statutory law restraining employer conduct of the type prohibited in the Wagner Act. The section could not have been drafted for the purpose of excluding state court action, since there was no reason to believe that any state court would take any case involving Wagner Act unfair labor practices.

The language of the Section bears out this point. The words "prevent," "adjustment," and "prevention" are not words ordinarily used to preclude the normal activity of courts. This language indicates that the section was designed simply to insure that the Board would not be hampered by private agreements, or, by conduct of state administrative agencies.

In amending Section 10(a), the Eightieth Congress was concerned with two factors, both relating to state labor relations boards, not state courts: first, the decision of this Court in *Bethlehem Steel Co. v. N. Y. S. L. R. B.*, 330 U. S. 767, 91 L. Ed. 1234 (1947), emphasizing the possibility of ceding jurisdiction to state boards, and, second, the fact that state labor relations acts were less restrictive on labor unions than the Federal Act. The Eightieth Congress did not want to see its restrictions on union action avoided through the use of state agencies. That the Eightieth Congress was not intending to preclude state court action under state law by its amendment is shown by the fact that *there is no way in which the Board can cede jurisdiction to state courts.*

There is almost no discussion of precluding state court action in the Senate Reports. If Congress had intended to suspend the operation of the state police power in the field of labor-management relations, clear language could have been employed. Furthermore, it hardly seems likely that a "states-rights" Congress, such as the Eightieth Congress, intended to prohibit state court action under state law by passage of the amended Federal Act.

The Board has contended that if we are to have a uniform national labor policy, the Board's power must be exclusive. But how is the national labor policy frustrated or embarrassed, as in this case, where a state court enjoins secondary picketing which also violates the federal Act? An injunction is only what the Board must seek anyway under the mandate of the Act. If a state court gives damages for acts which the Board chooses to remedy in some other way, no one can say that the national labor policy has been frustrated by the difference in remedies. In the absence of repugnance or conflict between state court action under the state law and the Federal Act, there can be no frustration or embarrassment to the Board in administering a uniform national labor policy. We respectfully submit, therefore, that in the absence of direct and positive repugnance or conflict between state court action and federal law, the state courts are not excluded from regulating under state law labor relations affecting commerce.

III.

**The National Labor Relations Board Has Not Alleged
or Proved a Cause of Action in Equity.**

It is a well recognized principle of law that state action to enforce state laws, alleged to be in conflict with the Federal Constitution, may be enjoined by federal courts only to prevent irreparable injury which is clear and imminent. (*American Federation of Labor v. Watson*, 327 U. S. 582, 90 L. Ed. 873 (1946).) In the *Watson* case, *supra*, this Court said at 327 U. S. 582, 592, 90 L. Ed. 873, at 880:

“But even though a district court has authority to hear and decide the case on the merits, it should not invoke its powers unless those who seek its aid have a cause of action in equity. *Douglas v. Jeannette*, *supra* (319 U. S. pp. 162, 163, 87 L. ed. 1328, 1329, 63 S. Ct. 877, 882). The power of a court of equity to act is a discretionary one. *Pennsylvania v. Williams*, 294 U. S. 176, 185, 79 L. ed. 841, 847, 55 S. Ct. 380, 96 A. L. R. 1166. Where a federal court of equity is asked to interfere with the enforcement of state laws, it should do so only ‘to prevent irreparable injury which is clear and imminent.’ *Douglas v. Jeannette*, *supra* (319 U. S. p. 163, 87 L. ed. 1329, 63 S. Ct. 877, 882); *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89, 79 L. ed. 1322, 55 S. Ct. 678; *DiGiovanni v. Camden F. Ins. Asso.*, 296 U. S. 64, 80 L. ed. 47, 56 S. Ct. 1; *Watson v. Buck*, 313 U. S. 387, 85 L. ed. 1416, 61 S. Ct. 962, 136 A. L. R. 1426.”

It was held in the *Watson* case, *supra*, that, although the bill alleged facts presenting a case of irreparable injury which was clear and imminent, the Federal District Court should refrain from passing on the merits of the suit until the State law has been authoritatively construed by the state courts, retaining the bill until this has been done, where the constitutional issues may be modified or altogether eliminated by the state court's determination.

In *Ackerman v. International Longshoremen's and Warehousemen's Union*, 187 F. 2d 860 (9th C. C. A., 1951), it is held that a federal court will not interfere in a case where the proceedings are already pending in a state court; accord, *Alesna v. Rice*, 172 F. 2d 176 (9th C. C. A., 1949); *Davega-City Radio v. Boland*, 23 Fed. Supp. 969 (1938) (action to enjoin proceedings in a state court denied under Section 2283 of Title 28, U. S. C.); *United Electrical R. and M. W. of A. v. Westinghouse Electric Corporation*, 65 Fed. Supp. 420 (1946) (action to enjoin state court proceedings denied under Section 2283 of Title 28, U. S. C.).

The Board has contended throughout these proceedings that where a statutory injunction is sought, traditional equity principles are not applicable, and that the Board is entitled to an injunction as a matter of right. The short answer to this contention is that there is no such principle of law. (*Hecht Company v. Bowles*, 321 U. S. 321, 88 L. Ed. 754 (1944).) Furthermore, the Board is not seeking a statutory injunction in this action.

It is hornbook law that a court of equity, in the exercise of its sound discretion in granting or denying an injunction, must balance the convenience of the parties and possible injuries to them. The District Court found

that the Board will be irreparably injured if a preliminary injunction does not issue for the reason that the Congressional objective of a uniform national labor policy will be frustrated. In *Pratt v. Stout*, 85 F. 2d 172 (1936), this type of injury to the Board was held to be inconsequential. Compared to the certain and substantial damage incurred by Petitioners through the loss of the protection afforded by the state court injunction, the damage to the Board is truly inconsequential. The District Court abused its discretion in refusing to weigh the equities and injuries to the respective parties under the theory that the Board was entitled to an injunction as a matter of right.

The decision of this Court in *Montgomery Building and Construction Trades Council v. Ladbetter Erection Company*, U. S., 97 L. Ed. (Adv.) p. 127, decided December 8, 1952, is also pertinent. In the *Ladbetter* case, *supra*, this Court held that the Supreme Court of the United States does not have jurisdiction to review a state court action granting a preliminary injunction enjoining secondary picketing and secondary boycott activity, even though the state action is alleged to be within the exclusive jurisdiction of the National Labor Relations Board. This Court held that the Supreme Court of the United States only has jurisdiction to review state court action when a final judgment or decree has been rendered by the highest court of the State. The Federal District Court abused its discretion in allowing the Board to circumvent the principle of the *Ladbetter* case by filing an action in the federal court to enjoin the interlocutory state court proceedings. The lower courts erred in upholding the contention of the Board that, al-

though the United States Supreme Court may not review a preliminary state court order if it is brought to the Supreme Court through the state courts, yet the Supreme Court may properly review the preliminary state court order if it is brought to the Supreme Court through the federal courts by the action of the Federal District Court enjoining the state court proceedings.

Conclusion.

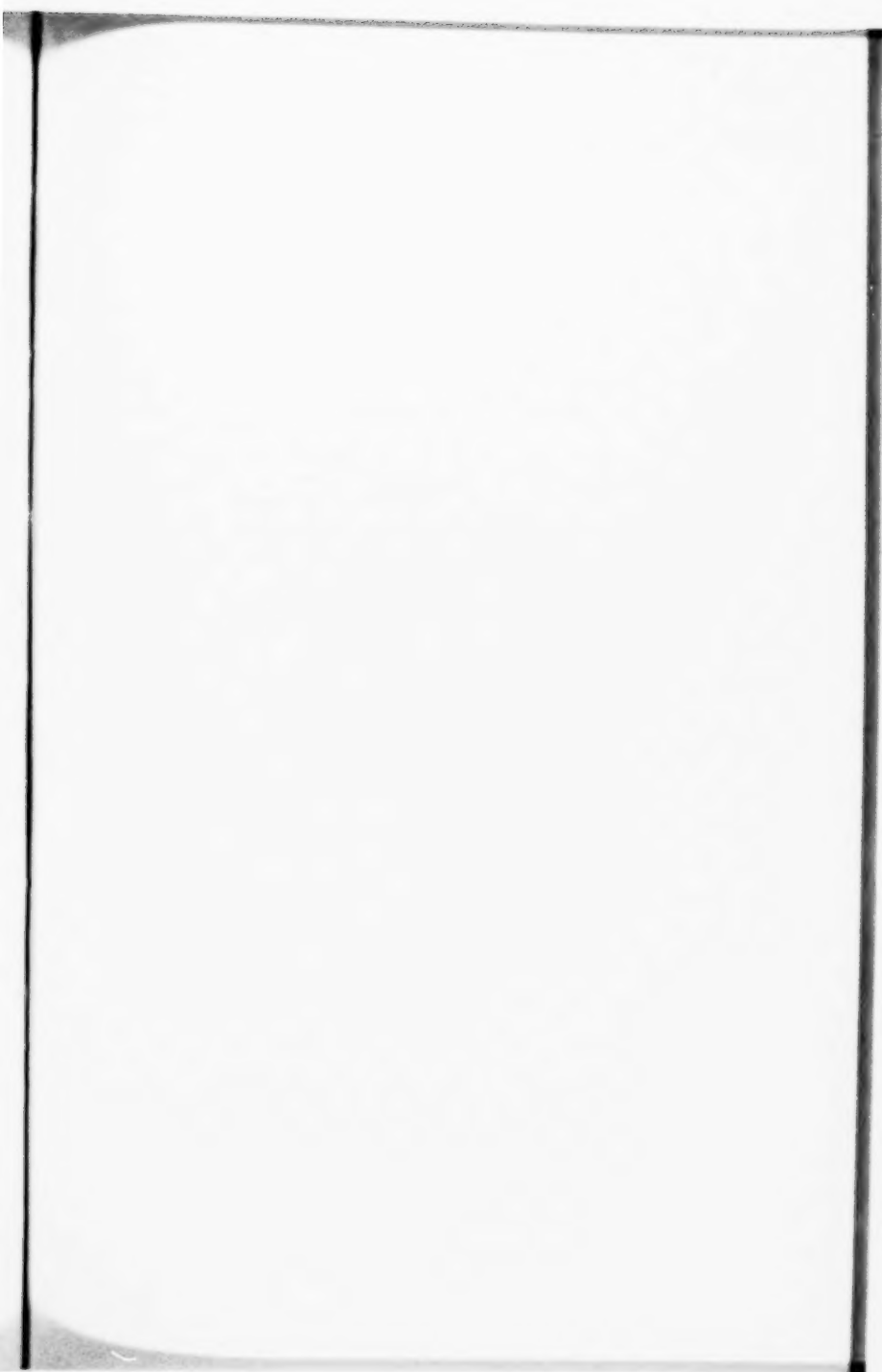
It is respectfully submitted that this Petition for Writ of Certiorari be granted and that the Court settle, with finality by its judgment the uncertainty and conflict in the law which now exists.

Respectfully submitted,

✓ CARL M. GOULD for
HILL, FARRER & BURRILL, and
HYMAN SMITH,

Attorneys for Petitioners.

Los Angeles, California, October, 1953.



THE UNITED STATES OF AMERICA
DO hereby certify that the following
is a true and correct copy of the
original as the same appears on file
in the office of the Secretary of the
War Department.

GENERAL LANDS RELATIONS BOARD

THESE ARE IN SUPPORT OF THE
WARRANT OF CAPTIONED

HILL, FARMER & SONS
STREET, NEW YORK
THEY HAVE BEEN
AND ARE NOW
IN THE

BLEED THROUGH

BLURRED COPY

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IN THE
Supreme Court of the United States

October Term, 1953

No. 398.

CAPITAL SERVICE, INC., doing business as Danish Maid Bakery, and G. BRASHEARS, individually and as President of said corporation,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

**REPLY BRIEF IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI.**

ARGUMENT.

I.

Garner v. Teamsters Is Not Decisive of the Instant Case.

Respondent, in its brief, states at page 11 that the instant proceeding should be disposed of in accordance with the decision of this Court in *Garner v. Teamsters*, No. 56, this term, decided December 14, 1953. We submit that the *Garner* case does not control the instant proceedings, for the reason that the *Garner* case decided only that where an employer seeks relief under a state *labor law* which is virtually identical to the federal labor law, Re-

spondent has exclusive jurisdiction over the parties and subject matter. In the instant proceedings, Petitioners filed suit in the state court to enjoin the unions from illegally restraining trade of Petitioners in violation of the California *restraint of trade statute*. The issue in the instant proceedings, as set out in Petitioners' Opening Brief, is whether or not Respondent has jurisdiction to enjoin Petitioners from prosecuting their *restraint of trade* suit in the state court. We respectfully submit that the National Labor Relations Act has no application whatever in a case involving no legitimate labor objective or labor dispute. If the activities of the unions involved have for their objective the illegal restraint of Petitioners' trade, a restraint of trade statute, either federal or state, is applicable, not a labor relations statute. The facts alleged in the state court action did not constitute a labor dispute under either state or federal law. We submit, therefore, that the *Garner* case is not decisive of this appeal.

The *Garner* case does not control this proceeding for the additional reason that this court stated in the *Garner* case that a state court has jurisdiction where the Federal Board has declined to exercise its powers, once its jurisdiction has been invoked. That is exactly the situation which exists in this case. After Petitioners obtained an injunction in the state court, the Board in the instant proceeding successfully enjoined Petitioners from utilizing this injunction. The Board's jurisdiction was upheld by the Ninth Circuit Court, 204 F. 2d 848, on the basis that all of the union activity was illegal under Sections 8(b)(1)(A) and 8(b)(4)(A) of the federal law. Petitioners filed a motion with the Board to modify the order issued in *Capital Service, Inc.*, 100 N. L. R. B. 1092

(wherein the Board did nothing more than enjoin the union from engaging in delivery entrance picketing in violation of Section 8(b)(4)(A)), and enjoin all picketing in accordance with the decision of the Ninth Circuit Court. The Board refused to modify its order. (*Capital Service, Inc.*, 106 N. L. R. B. No. 27 (July 17, 1953).) Thus, we have the anomalous situation that on April 3, 1952, the state court declared all of the union activity illegal, and on January 30, 1953, and again on May 12, 1953, the Ninth Circuit Court declared all of the union activity illegal under federal law, and yet the Board has successfully prevented Petitioners from obtaining relief from the illegal picketing *under either* state or federal law for eighteen months. We submit that this "dog in the manger" policy of the Board, wherein the Board takes jurisdiction from the state court and then refuses to grant the relief called for under federal law, should not be countenanced by this Court, and that in this situation this Court should hold that the state court has jurisdiction over the parties and subject matter under state law.

We will not attempt the Herculean task of persuading this Court to reverse the *Garner* decision. Needless to say, we think this Court erroneously decided the *Garner* case, and has ignored completely any reference to the legislative history of the Act, wherein is contained numerous expressions of opinion by various Congressmen that the federal law was intended only to complement state law, and not exclude state law except where there is direct conflict in right or remedy. See, for example, 2 Leg. Hist. 1379, 1380, where Senator Wherry posed the problem of a man with a load of milk which he cannot deliver to Omaha, Nebraska, because the union refuses to handle it. Senator Wherry contended the injunctive pro-

cesses of the Board were fraught with delay and subject to the whim and caprice of some "Government lawyer" (a striking resemblance to the facts of the instant case). Then the following transpired:

"Mr. Pepper: I am not sure but that the local citizen the Senator from Nebraska describes would have the right of injunctive relief in a local court. We are simply giving the right in the Federal Court, but he still has local machinery of which he may avail himself to prevent irreparable damage, if he can make a showing. It seems to me this would bring the matter into Federal jurisdiction.

Mr. Wherry: I agree that there are remedies in every State, but we are passing a Federal law, to give injunctive relief.

Mr. Pepper: The Senator would probably find the circuit judge closer than the Federal judge in most States, and I suggest a man would have a complete and adequate remedy in the local courts."

Conclusion.

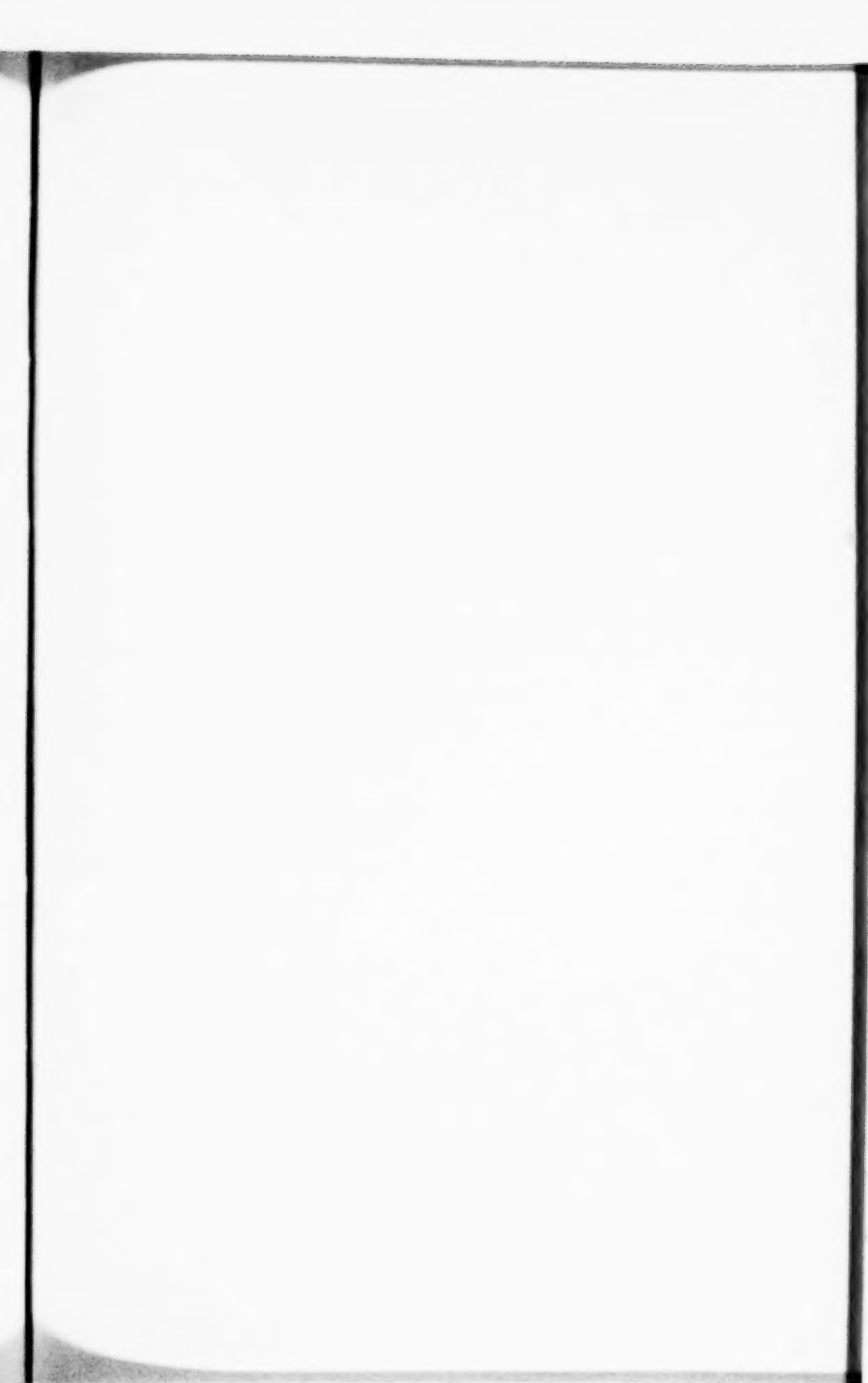
It is respectfully submitted that the Petition for Writ of Certiorari be granted and that the Court settle, with finality by its judgment the uncertainty and conflict in the law which now exists.

Respectfully submitted,

✓ CARL M. GOULD for
HILL, FARRER & BURRILL and
HYMAN SMITH,

Attorneys for Petitioners.

Los Angeles, California, December, 1953.



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BLEED THROUGH

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 398

CAPITAL SERVICE, INC., DOING BUSINESS AS DANISH
MAID BAKERY, AND G. BRASHEARS, INDIVIDUALLY
AND AS PRESIDENT OF SAID CORPORATION, PETI-
TIONERS

v.

NATIONAL LABOR RELATIONS BOARD

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT*

MEMORANDUM FOR THE NATIONAL LABOR RELA-
TIONS BOARD

OPINIONS BELOW

The opinion of the court below, as amended on rehearing (R. 166-175), is reported at 204 F. 2d 848. The findings of fact and conclusions of law of the trial court (R. 56-60), the United States District Court for the Southern District of California, are not officially reported.

JURISDICTION

The judgment of the court below, as amended on rehearing, was entered on May 12, 1953 (R. 176). On August 3, 1953, Mr. Justice Clark extended the time for filing a petition for a writ of certiorari through October 9, 1953 (R. 178). The petition was filed on October 9, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a state court has jurisdiction to enjoin, on the ground that it violates state labor relations policy, union activity which is affirmatively regulated by the National Labor Relations Act, such activity either all constituting unfair labor practices under Section 8(b) of the Act, or in part such practices and in part conduct protected by Section 7.

2. Whether the Board had power to institute this suit in a federal district court for purposes of protecting the rights and remedies established under the Act against encroachment by the state court.

3. Whether equitable relief, nullifying the continued effectiveness of the invalid state court action, was properly granted in this suit.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (49 Stat. 449, 61 Stat. 136, 29 U. S. C. (Supp. V) 151, *et seq.*, are set forth in the Appendix, *infra*, pp. 23-27.

STATEMENT

A. The Facts Underlying the Instant Suit

Petitioner Capital is engaged in the manufacture and distribution of bakery products in and around Los Angeles, California (R. 57).¹ Early in February 1952, following prior unsuccessful attempts to organize Capital's employees, representatives of Bakery Drivers Local Union No. 276 (herein referred to as the Union) sought to enlist the aid of the purchasers and consumers of Capital's products in a new organizing effort. Union agents contacted the management of various retail stores handling these products and advised that the Union had a dispute with Capital because it was "non-union" and on the unfair list of the Los Angeles Central Labor Council. The store was requested to cease handling Capital's products, and told that, unless it did so, a picket line would be set up. (R. 86, 138-139, 142, 144-145.)

Several of the stores acceded to the Union's

¹ During 1951, the year preceding the events in this case, Capital purchased raw materials valued in excess of \$500,000, approximately \$30,000 of which was received directly from points outside of California, and approximately \$175,000 of which was received indirectly from outside that state. Moreover, four of the retail grocery markets which sell its products, and whose businesses were affected by the events in this case, annually receive shipments of goods originating out of California in amounts ranging from \$250,000 to \$1,000,000. (R. 57; 90, 91, 2-3.) On these facts, the union activities hereafter described have, as petitioners apparently concede (Pet. 8), a sufficient impact on commerce to warrant the exercise of Board jurisdiction thereover. *Capital Service, Inc.*, 100 NLRB 1092, motion to modify denied, 106 NLRB No. 27 (July 17, 1953); see *Jamestown Builders Exchange, Inc.*, 93 NLRB 386.

initial request and discontinued orders of Capital's products (R. 111, 113, 115, 145). At the other stores, the Union established peaceful picket lines, the pickets carrying placards which read (R. 58; 99-100) :

TO THE PUBLIC
DANISH MAID
BAKERY PRODUCTS
SOLD HERE ARE MADE
AND DELIVERED BY
A BAKERY THAT IS
NON-UNION
AND ON THE
WE DO NOT PATRONIZE LIST
OF THE
LOS ANGELES CENTRAL LABOR COUNCIL
LOS ANGELES FOOD COUNCIL
JOINT COUNCIL OF TEAMSTERS' UNION 42
BAKERY DRIVERS' LOCAL 276
BAKERS' LOCAL NUMBER 37

Some of the picketing was carried on in front of the consumer entrances to the stores, and some occurred at the entrances where the store received deliveries from suppliers (R. 97, 129-130, 132, 148-149). Deliverymen bringing supplies to the stores, who themselves were Union members, refused to make their regularly scheduled deliveries upon seeing the pickets (R. 130, 136, 143-144). Moreover, at times the pickets approached the deliverymen and urged them not to cross the picket lines, whereupon the supply trucks would drive off (R. 110, 130,

133). When a store being picketed removed Capital's products from its shelves, the pickets were withdrawn, and deliveries by suppliers were resumed (R. 115, 127-128, 135, 145-146).

Petitioners countered by seeking relief before both state and federal tribunals. Thus, on Friday, February 18, 1953, they filed suit for an injunction in the Superior Court of California, on the ground that the aforementioned Union activity constituted a conspiracy in restraint of trade prohibited by the California anti-trust law, the Cartwright Act (R. 18-37).² Three days later—Monday, February 21—they filed an unfair labor practice charge with the National Labor Relations Board's Regional Office, asserting that the same conduct alleged in the state court complaint, engaged in by the same labor organizations specified therein, constituted unfair labor practices within the meaning of Section 8(b) (4) (A) of the National Labor Relations Act (R. 11-16).³

On April 3, 1952, the Superior Court issued a preliminary injunction banning *all* picketing and allied union activities at the retail stores (R. 40-42.) In an opinion accompanying this injunction,

² Made defendants to this action were the Union, the other labor organizations listed on the placards carried by the pickets, and certain of the retail stores affected by the picketing; the stores, however, were never served with process (R. 118).

³ The same day, petitioners also filed a damage suit in the federal district court against these labor organizations, on the theory that this conduct was independently unlawful under Section 303 of the Labor Management Relations Act, 61 Stat. 136, 158-159, 29 U.S.C. (Supp. V) 187 (R. 4).

the Superior Court expressly rejected petitioners' contention that such activities violated the Cartwright anti-trust law, and pointed out that the case merely involved an attempt "to unionize" Capital's employees (R. 42). The court, conceding that it was "pioneering," predicated the injunction on its power "to declare the public policy of [California]," and—after evaluating the respective rights of the three interests "affected by a labor dispute, (1) management, (2) labor and (3) the public"—on its conclusion that "secondary picketing" was contrary to state policy (R. 44). A motion by the unions so enjoined to vacate the injunction, on the ground that the Board had exclusive jurisdiction to regulate the conduct involved and indeed had the same case pending before it, was summarily denied (R. 46-47).

Meanwhile, the Board's Regional Director, upon investigation of petitioners' unfair labor practice charge covering the identical conduct, concluded that there was reasonable cause to believe that only one of the labor organizations specified in the charge, the Union, had engaged in conduct violative of the Act, and then only insofar as its conduct could be deemed to have induced or encouraged employees of employers other than Capital to engage in concerted refusals to perform services for the purpose of forcing or requiring Capital's customers to cease doing business with it. Insofar as the conduct merely involved an appeal to the public in general, the Regional Director concluded that it was valid and proper under the Act. Accordingly, the

Regional Director issued an unfair labor practice complaint on this limited basis, alleging that the Union's inducement of secondary employees constituted, *inter alia*, an unfair labor practice under Section 8(b)(4)(A), and, as required by Section 10(1) of the Act, he also petitioned the appropriate federal district court for an injunction restraining such conduct pending final Board adjudication (R. 37-40, 66-70).

At the same time, the Board concluded that the outstanding Superior Court injunction regulating the same conduct, not only invaded the field preempted by the Act, but rendered virtually meaningless the judgment which would ultimately be issued by the federal court and the Board in the unfair labor practice proceeding.⁴ Hence, simultaneously with the filing of the Section 10(1) petition against the Union, the Board instituted, in the same federal district court, the instant suit against petitioners for the purpose of removing the impediment created by their Superior Court injunction (R. 1-10).

B. The Conclusions and Order of the District Court

The complaint in the instant suit, predicated on 28 U. S. C. 1337,⁵ alleged that the National Labor Relations Act had preempted regulation of the activities covered by the outstanding Superior Court

⁴ Cf. *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767, 775-776.

⁵ This section provides that:

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

injunction, and had thereby removed them from the ambit of state regulation. More specifically, the complaint alleged that the Union's picketing at the delivery entrances of the retail stores and its oral requests to deliverymen not to make deliveries (hereafter called "delivery entrance picketing") constituted inducement of secondary employees to engage in concerted refusals to perform services, proscribed by Section 8(b)(4)(A) of the Act, and was the subject of a concurrent Section 10(1) proceeding in the District Court (R. 7). It was further averred that the remainder of the Union activity—appeals to ultimate consumers through picketing at the consumer entrances of the stores (hereafter called "consumer entrance picketing")—constituted conduct affirmatively protected under Section 7 of the Act (R. 8). Finally, it was alleged that the continued effectiveness of the invalid Superior Court injunction irreparably impaired the Congressional objective of a uniform national labor policy in industries affecting commerce, and nullified, *pro tanto*, Board and district court action in the cases before them involving the same subject matter (R. 9).

After hearing, the District Court entered findings of fact and conclusions of law sustaining the allegations of the complaint (R. 56-60). The court found that all of the aforementioned Union activities were in furtherance of a labor dispute with Capital, that they affected commerce within the meaning of the Act, and that the Superior Court injunction regulated the same conduct which the

Board had to evaluate in the case before it. The court further found that the delivery entrance picketing appeared to constitute a violation of Section 8(b)(4)(A) of the Act,⁶ and that the consumer entrance picketing, though not an unfair labor practice, was nevertheless in the field covered by the Act and thus preempted thereby. (R. 59-60.) Accordingly, the court concluded that the Superior Court was without jurisdiction to restrain any of these concerted activities, and its action in doing so constituted an encroachment upon the exclusive regulatory scheme established by the Act (R. 60).

In addition, the District Court concluded that the Board was vested with authority to institute the instant suit for the purpose of vindicating the policies of Congress and protecting its own jurisdiction; that it had been established that a preliminary

⁶ The District Court made the same finding in the Section 10 (l) proceeding, which, because it turned on the same facts as those underlying the instant suit, had been consolidated with the latter for purposes of hearing (R. 89). In the Section 10(l) proceeding, the court then entered—at the same time that it entered the decree herein against petitioners (p. 10, *infra*)—an injunction enjoining the Union, pending final Board adjudication, from engaging in those of its activities, *i.e.*, the delivery entrance picketing, which appeared to constitute a violation of Section 8(b)(4)(A) of the Act (R. 76-77).

Subsequently, the Board has issued a Decision and Order finding that the delivery entrance picketing did in fact violate Section 8(b)(4)(A), and has entered an appropriate cease and desist order. *Capital Service, Inc.*, 100 NLRB 1092, motion to modify denied, 106 NLRB, No. 27 (July 17, 1953). Petitioners, pursuant to Section 10(f) of the Act, are now seeking review of this order in the Court of Appeals for the Ninth Circuit, assigning as error the Board's failure to find that the Union's consumer entrance picketing was also an unfair labor practice under the Act. *Capital Service, Inc. v. National Labor Relations Board*, No. 13,864 (C.A. 9).

injunction was necessary and proper to avoid further irreparable impairment of the policies of the Act, to protect the exclusive jurisdiction of the Board over the identical case before it, and to effectuate the interim Section 10(1) decree entered therein by the District Court; and that Section 2283 of the Judicial Code (see n. 18, p. 20, *infra*) did not bar issuance of such injunction, where, as here, an exclusive federal jurisdiction required vindication (R. 60).

The District Court entered a preliminary injunction enjoining petitioners from "enforcing or seeking to enforce . . ." or otherwise enjoying the benefits of the decree issued by the Superior Court. They were also enjoined "from taking or applying for any further proceedings in said Superior Court the effect of which would be to enjoin or restrain" the Union and the other labor organizations who were made defendants in the Superior Court suit "from engaging in peaceful picketing or other concerted activities affecting the customers of Capital . . . and their suppliers, and which are carried on pursuant to a labor dispute with Capital. . . ." (R. 61.)

C. The Conclusions of the Court Below

On appeal, the court below affirmed the order of the District Court. The court below agreed that regulation of all of the conduct covered by the Superior Court injunction was preempted by the Act, and that the Board was entitled to prevent it from continuing to infringe upon the exclusive

procedures established by the Act. The court, however, differed in part with the District Court over the manner in which the Act had affirmatively regulated the Union activity in question. It agreed that the delivery entrance picketing constituted an unfair labor practice under Section 8(b)(4)(A), but concluded that the consumer entrance picketing, rather than being conduct protected by Section 7 of the Act, also constituted an unfair labor practice, violating Section 8(b)(1)(A).⁷ (R. 166-175.)

ARGUMENT

The question whether a state court has jurisdiction to enjoin conduct affirmatively regulated by the Act, is already before this Court in *Garner v. Teamsters*, No. 56, this Term, argued October 20-21, 1953. Accordingly, insofar as this question is concerned, we respectfully request that the Court retain the instant petition on its docket pending decision in *Garner*, and then dispose of it in accordance therewith. Since the Board's *amicus* brief in *Garner* fully explains its position on that issue, we shall not repeat the position in detail. However, in view of petitioners' attempt to enlarge the scope of the case, certain additional comments appear warranted, and they are set forth in Point 1 below. The

⁷ The theory of the court below in this respect was that, although the consumer entrance activity did not induce or encourage secondary employees as did the delivery entrance picketing, it did exert pressure not to buy Capital's products, which in turn threatened the continued employment of Capital's own employees. As a result, it was reasonable to expect that these employees could no longer freely exercise the right guaranteed by Section 7 to refrain from union membership. (R. 171-172.)

remaining procedural questions presented, *viz.*, whether the Board had power to institute a suit of this character in a federal district court for the purposes of protecting the rights and remedies established under the Act against encroachment by a state court, and whether equitable relief was properly granted in this suit, raise no issues, apart from the first question, warranting review by this Court.

1. Viewing the entire picketing here as constituting unfair labor practices under the Act—the delivery entrance activity coming within the ban of Section 8(b)(4)(A), and the consumer entrance picketing within Section 8(b)(1)(A)—, the court below properly concluded that “control by the federal tribunals is exclusive” (R. 174-175), and thus the state court lacked jurisdiction to regulate any of the conduct. *Plankinton Packing Co. v. Wisconsin Employment Relations Board*, 338 U.S. 953; *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767, 775-776; Board Brief in *Garner*, No. 56, this Term. In agreement with the court below, petitioners concede (Pet. 8) that all of the union activity “violates” the Act, but contest the ensuing conclusion that this circumstance precludes a state court from providing additional sanctions. Consequently, the question raised by the petition, as petitioners recognize (Pet. 10, Br. 23), is the same question involved in the *Garner* case, *i.e.*, whether a state court can enjoin conduct amounting to unfair labor practices under the Act. To this question, petitioners ad-

dress but one argument—*viz.*, that Section 10(a) of the Act was only intended to preclude concurrent regulation by state administrative agencies and not by state courts (Br. 23-26)—a contention which, for reasons outlined in the Board's brief in *Garner*, pp. 30-41, is insubstantial.

Although the Board, in the court below, viewed the conduct differently—partly as an unfair labor practice under the Act and partly as conduct protected by Section 7 thereof—this view does not alter the propriety of the court's ultimate conclusion that the state court lacked jurisdiction over all of the conduct. For, no more than the states may impose additional sanctions for unfair labor practices proscribed by the Act, "states may not regulate in respect to rights guaranteed by Congress in Section 7" of the Act. *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. 383, 391; see *Hill v. Florida*, 325 U.S. 538.

However, petitioners, in their supporting brief (Br. 17-23), shift from the assumption that all of the conduct involved is affirmatively regulated by the Act—which assumption underlies, not only the positions of the Board and the court below, but also that of the petition itself—and argue the wholly separate question of whether the Act precludes state regulation of conduct neither protected nor prohibited thereby. Apart from the fact that this question does not appear to have been properly raised (*General Pictures Co. v. Electric Co.*, 304 U.S. 175, 179) and that petitioners' reasons

for asserting that the instant activity is outside the Act are insubstantial,⁸ the question which petitioners thus seek to interject is, nevertheless, not presented on the facts of this case.

It is apparent that the delivery entrance activity was calculated to, and did, induce and encourage deliverymen not to supply the retail stores, and, indeed, on several occasions the pickets orally requested deliverymen not to unload their supplies (p. 4, *supra*). Accordingly, this activity, as the court below, the District Court and the Board have found (pp. 11, 9, 7, *supra*), falls precisely within the proscription of Section 8(b)(4)(A) of the Act. *International Brotherhood of Electrical Workers v. National Labor Relations Board*, 341 U.S. 694.

⁸ Petitioners' conclusion that the instant activity is outside the Act rests on this reasoning: such activity was in furtherance, not of a labor dispute, but of a restraint of trade violative of the California anti-trust laws; the Act only covers conduct growing out of a labor dispute, and hence it cannot apply here. But, the assumption that there was no labor dispute is flatly repudiated by the findings, not only of the two federal courts below (R. 59, 169-175), but also of the state court which issued the injunction underlying the instant suit. The state court specifically rejected petitioners' contention that the picketing constituted a restraint of trade under state law, and then, concluding that it was merely an attempt "to unionize" petitioners' employees, proceeded to find the activity unlawful as a matter of state labor relations policy (pp. 5-6, *supra*, R. 43-45). Moreover, irrespective of how the instant picketing would be classified under state law, the question of whether it falls within the Act depends upon whether it meets the terms thereof, a condition which both the District Court and the Court of Appeals found was satisfied.

It is also significant that petitioners, in the proceedings to review the Board's unfair labor practice order now pending in the Ninth Circuit (n. 6, p. 9, *supra*), are contending that the consumer entrance picketing here violated Section 8(b)(1)(A) of the Act, and do not challenge the Board's finding that the delivery entrance activity violated Section 8(b)(4)(A).

The consumer entrance picketing, on the other hand, did not amount to inducement or encouragement of secondary employees in the course of their employment, but constituted an appeal to the public to refrain from buying Capital's non-union products. History reveals that a peaceful appeal of this kind was one of the conventional tactics of organized labor which Congress undertook to protect when, in Section 7 of the Wagner Act, it accorded to employees the right to engage in "concerted activities, for the purpose of collective bargaining or other mutual aid or protection."⁹ Although the Act was amended in 1947, the terms of Section 7 of the Wagner Act, insofar as here relevant, were continued unchanged, and the original scope of this provision was qualified only to the extent that the newly added Section 8(b) classified certain concerted activities previously protected as unfair labor practices.¹⁰ Accordingly, under the amended Act, the consumer appeal herein is still protected by Section 7, unless it has been encompassed within the proscriptions of Section 8(b);¹¹ in no event,

⁹ See Daugherty, *Labor Problems in American Industry* (Houghton, Mifflin, 1941) p. 487; Stein, *et al.*, *Labor Problems in America* (Farrar & Rinehart, 1940), pp. 610-611; Frankfurter and Greene, *The Labor Injunction* (Macmillan, 1930), pp. 219-220; 79 Cong. Rec. 7670; *National Labor Relations Board v. Peter Cailler Kohler Swiss Choc. Co.*, 130 F. 2d 503, 505-506 (C.A. 2).

¹⁰ See 1 Legislative History of the Labor Management Relations Act, 1947 (Gov't. Print. Off., 1948), 49, 77-79, 542-544, 562-563.

¹¹ The court below, on reviewing the legislative history of Section 8(b)(1)(A), concluded that this provision was intended to reach the activity in question (R. 169-173). On the other hand, the Board, reading such history differently, had argued in the court below that Congress left the activity within

however, would it fall in the category of conduct neither prohibited nor protected by the Act.

In sum, this case merely involves the question of whether a state court has power to regulate conduct affirmatively regulated by the Act, and there is no need to determine whether the Act would preclude state control over activity which it neither protects nor prohibits.¹² Hence, should this Court decide in *Garner* that the Act closed the door to concurrent state court regulation, this would be

the protection of Section 7. See *Perry Norvell Co.*, 80 NLRB 225, 238-243; *Watson's Specialty Store*, 80 NLRB 533, 539 546-548, enforced, 181 F. 2d 126 (C.A. 6), affirmed, 341 U.S. 707; *Crowley's Milk Company, Inc.*, 102 NLRB No. 102 (February 4, 1953), enforced, 33 LRRM 2110, 2112-2113 (C.A. 3 November 13, 1953); *Consolidated Frame Co.*, 91 NLRB 1295, 1299; *The Higbee Co.*, 97 NLRB 654, 666-668; 93 Cong. Rec. 4867 (Senator Taft). A resolution of this difference is unnecessary here, for, under either alternative, the ultimate conclusion of the court below is valid (p. 13, *supra*).

¹² This was the situation thought to exist in the *Auto Workers*, *Goodwins* and *Sommer* cases cited by petitioners (Br. 17-19). Thus, in *Auto Workers v. Wisconsin Employment Relations Board*, 336 U.S. 245, which involved the novel technique of "quickie strikes," this Court emphasized that such tactic was "neither forbidden by federal statute nor was it legalized and approved thereby" (at 265). Unlike the situation here, there could consequently be "no existing or possible conflict or overlapping between the authority of the Federal and State Boards, because the Federal Board has no authority either to investigate, approve or forbid the union conduct in question" (at 254). Similarly, in *Goodwins v. Hagedorn*, 303 N.Y. 309, 101 N.E. 2d 697 (N. Y. Ct. Appeals) and *Sommer v. Metal Trades Council*, 40 A.C. 396, 254 P. 2d 559 (Cal. S. Ct.)—which involved picketing for recognition by minority unions at a time when the employer had already recognized another union or when the representation question was pending before the Board—both courts arrived at their conclusion that the state had power to ban the activity only after having first found that it was neither within the ban of Section 8(b) (4) (C) of the Act nor protected by Section 7 thereof (101 N.E. 2d at 699-700; 254 P. 2d at 564-565).

dispositive of the substantive issue in the instant case.

2. The contention (Br. 13-14) that the Board lacked authority to initiate the instant suit is without merit. It is immaterial that such power is not specifically conferred by any provision of the Act, for, where effectuation of the policies of a statute so requires, the power of administrative agencies to initiate or participate in judicial proceedings has frequently been implied.¹³ Similarly here, it is manifest that Congress, in creating the Board as "a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining" (*Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 267), contemplated that it would be empowered to take whatever legal steps appeared necessary to insure that the rights and remedies created by the Act remained exclusive. Otherwise, achievement of the uniform national labor policy envisioned by Congress would be left to the accident of whether, and how successfully, litigants in private suits defended the Act's exclusive jurisdiction against infringement. Accordingly, the other courts which have had occasion to consider the matter have uni-

¹³ See *Bowles v. Willingham*, 321 U.S. 503, 510-511, 522-523; *Securities and Exchange Commission v. United States Realty and Improvement Co.*, 310 U.S. 434, 460; *Walling v. Brooklyn Braid Co.*, 152 F. 2d 938, 940 (C.A. 2). See also, *National Labor Relations Board v. Sunshine Mining Co.*, 125 F. 2d 757 (C.A. 9); *National Labor Relations Board v. Killoren*, 122 F. 2d 609 (C.A. 8), certiorari denied, 314 U.S. 696.

formly agreed with the conclusion of the courts herein that the Board has power to invoke judicial processes for purposes of vindicating the paramount policies of the Act.¹⁴

Petitioners wholly misconceived the nature of this case in suggesting (Br. 14) that the Board's cause of action should have been litigated in an unfair labor practice proceeding under the Act. Apart from the fact that it is not clear to what extent, if any, action by an employer in securing an invalid state injunction constitutes an unfair labor practice under the Act,¹⁵ the complaint here sought, not a remedy for unfair labor practices, but one that could displace state action which had encroached upon the field preempted by the Act, and had, indeed, interfered with the operation of its unfair labor practice procedures. Plainly, the Act's unfair labor practice procedures were not designed, nor are they adequate, for this purpose.

3. Likewise without substance is the contention (Br. 27-30) that there was no claim warranting federal equitable intervention in the state court proceeding. As we have shown (pp. 12-16, *supra*), the Act—in furtherance of the judgment of Congress that industrial strife would be minimized by a uniform national labor policy in industries affecting commerce—preempted control over all of the activity regulated by the Superior Court injunction and thus deprived that court of jurisdic-

¹⁴ *National Labor Relations Board v. New York State Labor Relations Board*, 106 F. Supp. 749 (S.D. N.Y.) ; *National Labor Relations Board v. Industrial Commission of Utah*, 84 F. Supp. 593 (D. Utah), affirmed, 172 F. 2d 389 (C.A. 10).

¹⁵ See *W. T. Carter and Brother*, 90 NLRB 2020, 2023-2024, 2029.

tion over such activity. In these circumstances, state court intrusion upon the exclusive federal field nullifies the will of Congress (Cf. *Bowles v. Willingham*, 321 U. S. 503, 511, 523), and creates the uncertainties and potential conflicts which are so disruptive of industrial peace that "a case by case test of federal supremacy is [not] permissible here." *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, 776.¹⁶ Thus, as the District Court found (pp. 9-10, *supra*) and the court below tacitly affirmed, petitioners' state court decree—explicitly predicated on the same labor relations considerations which Congress had evaluated in the Act—presented a clear and imminent threat of irreparable injury to the regulatory scheme of the Act. And, since the Board was not a party to the state court proceeding (Cf. *Hale v. Bimco Trading Co.*, 306 U. S. 375, 377-378), and that court had already refused to acknowledge its lack of jurisdiction over the subject matter (p. 6, *supra*), only the processes of the federal courts afforded adequate assurance of a speedy vindication of the national policy. Cf. *Prentis v. Atlantic Coast Line*, 211 U. S. 210, 228.

For these reasons, it has consistently been held that a case for federal equitable relief is established where, as here, state action has, or threatens to, invade the field preempted by the Act.¹⁷ This con-

¹⁶ See also, *Lacrosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U.S. 18, 25-26; cf. *A.F.L. v. Watson*, 327 U.S. 582, 594-595.

¹⁷ *National Labor Relations Board v. Industrial Commission of Utah*, 84 F. Supp. 593 (D. Utah), affirmed, 172 F. 2d 389 (C.A. 10); *United Office and Professional Workers v. Smiley*, 77 F. Supp. 659 (M.D. Pa.); *Linde Air Products Co. v. Johnson*,

clusion remains valid even where, as is also true here, it is the action of a state court, rather than some other state authority, which has caused the interference. Thus, while 28 U.S.C. (Supp. V) 2283¹⁸ provides a rule of comity for state and federal tribunals having a concurrent jurisdiction, it does not, as the District Court held (p. 10, *supra*), militate against a stay when the state court, acting without authority, has undertaken to encroach upon an exclusive federal jurisdiction.¹⁹

77 F. Supp. 656 (D. Minn.); *Food, Tobacco, et al. Workers v. Smiley*, 74 F. Supp. 823 (E.D. Pa.), affirmed, 164 F. 2d 922 (C.A. 3). Compare, *Merced Dredging Co. v. Merced County*, 67 F. Supp. 598, 613 (S.D. Cal.); *Board of Trade v. Illinois Commerce Comm'n.*, 156 F. 2d 33 (C.A. 7), affirmed, 331 U.S. 218; *All American Airways, Inc. v. Village of Cedarhurst*, 106 F. Supp. 521 (E.D. N.Y.), affirmed, 201 F. 2d 273 (C.A. 2).

The situation here is thus distinguishable from *Ackerman v. I.L.W.U.*, 187 F. 2d 860 (C.A. 9) and *Alesna v. Rice*, 172 F. 2d 176 (C.A. 9) (Br. 28), involving state criminal proceedings. In those cases, the state courts had jurisdiction over the subject matter, and, since the individuals claiming that the state proceeding abridged federal rights were parties to the proceeding, the state court system afforded an adequate mechanism for adjudicating the issue. Cf. *Stefanelli v. Minard*, 342 U.S. 117, 120.

¹⁸ This provision, which was formerly Section 265 of the Judicial Code, now reads: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

¹⁹ *National Labor Relations Board v. New York State Labor Relations Board*, 106 F. Supp. 749, 752 (S.D. N.Y., Bondy, J.); *Brown v. Wright*, 137 F. 2d 484, 488 (C.A. 4); *Bowles v. Willichingham*, 321 U.S. 503, 510-511 (alternative ground); *Porter v. Dicken*, 328 U.S. 252, 255; *Fleming v. Rhodes*, 331 U.S. 100, 107-108; *Western Fruit Growers v. United States*, 124 F. 2d 381, 386-387 (C.A. 9). Cf. *Hale v. Bimco Trading Co.*, 306 U.S. 375; *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 182-184.

The cases of *Davega-City Radio v. Boland*, 23 F. Supp. 969 (S.D. N.Y.) and *United Electrical et al. v. Westinghouse Electric Corporation*, 65 F. Supp. 420 (E.D. Pa.), cited by

Finally, contrary to petitioners' assertion (Br. 29), *Montgomery Building and Construction Trades Council v. Ledbetter Erection Company*, 344 U. S. 178, in no way detracts from the propriety of the injunctive relief granted in this case. The dismissal of certiorari in that case was predicated solely upon the ground that the state court preliminary injunction sought to be reviewed was not a final order within the requirements of the statutory provision which gives this Court jurisdiction to review state court orders. See 28 U. S. C. 1257. Manifestly, that decision has no bearing whatever on the different question of whether a federal district court, in the exercise of its original jurisdiction, may properly bar the continued effectiveness of a state court preliminary injunction.

CONCLUSION

For the foregoing reasons, we respectfully suggest that, insofar as the first question herein is concerned, this Court should retain the present petition on its docket pending decision in *Garner v. Teamsters*, No. 56, this Term, and then dispose of said question in accordance with the holding in that case. Apart from the first question, the sec-

petitioners (Br. 28), are inapposite. *Davega-City*, as explained by the court in *National Labor Relations Board v. New York State Labor Relations Board*, 106 F. Supp. at 753, "was decided [in 1938] when the jurisdiction of the State Board over enterprises affecting commerce was considered concurrent with that of the National Board in the absence of prior action by the National Board in the particular case." Similarly, *Westinghouse Electric* is explained by the fact that it involved conduct (mass picketing and violence) over which, unlike here, the state court possessed a concurrent jurisdiction.

ond and third questions herein present no issues warranting review, and the petition should be denied as to them.

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DECEMBER, 1953.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (49 Stat. 449, 61 Stat. 136, 29 U.S.C. Supp. V, 151 *et seq.*), are as follows:

DEFINITIONS

Sec. 2. When used in this Act—

* * * * *

(6) The term “commerce” means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term “affecting commerce” means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the

purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8. * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer,

or to cease doing business with any other person; * * * (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * *

(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 8(b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice

thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D).

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 398

CAPITAL SERVICE, INC., DOING BUSINESS AS DAN-
ISH MAID BAKERY, AND G. BRASHEARS, INDI-
VIDUALLY AND AS PRESIDENT OF SAID CORPORATION,
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Court of Appeals, as amended on rehearing (R. 166-175), is reported at 204 F. 2d 848. The findings of fact and conclusions of law of the District Court (R. 56-60) are not officially reported.

JURISDICTION

The judgment of the court below was entered on May 12, 1953 (R. 176). On August 3, 1953, Mr. Justice Clark extended the time for filing a petition

for a writ of certiorari to October 9, 1953 (R. 178). The petition was filed on October 9, 1953, and was granted in part on January 18, 1954 (R. 179; 346 U. S. 936). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

The order allowing certiorari limits review to the following question:

“In view of the fact that exclusive jurisdiction over the subject matter was in the National Labor Relations Board (*Garner v. Teamsters Union*, 346 U. S. 485), could the Federal District Court, on application of the Board, enjoin Petitioners from enforcing an injunction already obtained from the State Court?” (346 U. S. 936.)

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (49 Stat. 449, 61 Stat. 136, 29 U. S. C. (Supp. V) 151, *et seq.*), and of the Judicial Code (28 U. S. C. 1337, 1651, and 2283) are set forth in the Appendix, *infra*, pp. 62-69.

STATEMENT

A. THE UNDERLYING FACTS

Capital Service, Inc., a California corporation doing business in the Los Angeles area under the name of Danish Maid Bakery (herein referred to as Capital), is engaged in the manufacture and dis-

tribution of bakery products (R. 57).¹ Early in February 1952, following prior unsuccessful attempts to organize Capital's employees, representatives of Bakery Drivers Local Union No. 276 (herein referred to as the Union) sought to enlist the aid of the purchasers and consumers of Capital's products in a new organizing effort. Union agents approached the management of various retail stores handling these products and advised that the Union had a dispute with Capital because it was "nonunion" and on the unfair list of the Los Angeles Central Labor Council. Each store was requested to cease handling Capital's products, and was told that, unless it did so, a picket line would be set up (R. 86, 138-139, 142, 144-145).

Several of the stores acceded to the Union's initial request and discontinued purchases of

¹ During 1951, the year preceding the events in this case, Capital purchased raw materials valued in excess of \$500,000, approximately \$30,000 of which was received directly from points outside of California, and approximately \$175,000 of which was received indirectly from outside that state. Moreover, four of the retail grocery markets which sell its products, and whose businesses were affected by the events in this case, annually receive shipments of goods originating out of California in amounts ranging from \$250,000 to \$1,000,000 (R. 57; 90, 91, 2-3). On these facts, the union activities hereafter described have, as petitioners do not dispute (Pet. 8), a sufficient impact on commerce to be subject to the Board's jurisdiction. *Capital Service, Inc.*, 100 NLRB 1092, motion to modify denied, 106 NLRB No. 27 (July 17, 1953); see *Jamestown Builders Exchange, Inc.*, 93 NLRB 386.

Capital's products (R. 111, 113, 115, 145). At the other stores, the Union established peaceful picket lines, the pickets carrying placards which read (R. 58; 99-100):

TO THE PUBLIC
DANISH MAID
BAKERY PRODUCTS
SOLD HERE ARE MADE
AND DELIVERED BY
A BAKERY THAT IS
NONUNION
AND ON THE
WE DO NOT PATRONIZE LIST
OF THE
LOS ANGELES CENTRAL LABOR COUNCIL
LOS ANGELES FOOD COUNCIL
JOINT COUNCIL OF TEAMSTERS' UNION 42
BAKERY DRIVERS' LOCAL 276
BAKERS' LOCAL NUMBER 37

Some of the picketing was carried on in front of the consumer entrances to the stores, and some occurred at the delivery entrances where the stores received goods from suppliers (R. 97, 129-130, 132, 148-149). Deliverymen bringing supplies to the stores, who themselves were Union members, refused to make their regularly scheduled deliveries upon seeing the pickets (R. 130, 136, 143-144). Moreover, at times the pickets approached the deliverymen and urged them not to cross the picket lines, whereupon the supply trucks would drive off (R. 110, 130, 133). When a store being picketed removed Capital's products from its shelves, the pickets were withdrawn, and

deliveries by suppliers were resumed (R. 115, 127-128, 135, 145-146).

Petitioners countered by seeking relief before both state and federal tribunals. On February 18, 1952, they filed suit for an injunction in the Superior Court of the State of California in and for the County of Los Angeles, alleging that the Union's activities constituted a conspiracy in restraint of trade prohibited by the California anti-trust law, commonly known as the Cartwright Act (R. 18-37).² Three days later—February 21—they filed an unfair labor practice charge with the National Labor Relations Board's Regional Office, asserting that the same conduct alleged in the state court complaint, engaged in by the same labor organizations specified therein, constituted unfair labor practices within the meaning of Section 8 (b) (4) (A) of the National Labor Relations Act (R. 11-16).³

On April 3, 1952, the Superior Court issued a preliminary injunction banning *all* picketing and

² Made defendants to this action were the Union, the other labor organizations listed on the placards carried by the pickets, and certain of the retail stores affected by the picketing; the stores, however, were never served with process (R. 118).

³ The same day, petitioners also filed a civil suit for damages in the federal district court against these labor organizations, on the ground that this conduct was independently unlawful under Section 303 of the Labor Management Relations Act, 61 Stat. 136, 158-159, 29 U. S. C. (Supp. V) 187 (R. 4). This suit is apparently still pending in the district court.

for the purpose of removing the impediment created by enforcement of the Superior Court injunction (R. 1-10).

B. THE PROCEEDINGS IN THE DISTRICT COURT

The complaint in the instant suit (Civil Action No. 14142) alleged that the National Labor Relations Act had preempted regulation of the activities covered by the outstanding Superior Court injunction, and had thereby removed them from the ambit of State regulation. More specifically, the complaint alleged that the Union's picketing at the delivery entrances of the retail stores and its oral requests to deliverymen not to make deliveries constituted inducement of secondary employees to engage in concerted refusals to perform services, proscribed by Section 8 (b) (4) (A) of the Act, and was the subject of the concurrent Section 10 (l) proceeding against the Union (Civil Action No. 14141) in the District Court (R. 7). It was further averred that the remainder of the Union's activities—i. e., appeals to ultimate consumers through picketing at the consumer entrances of the stores—constituted conduct affirmatively protected under Section 7 of the Act (R. 8). Finally, it was alleged that the continued effectiveness of the Superior Court injunction irreparably impaired the Congressional objective of a uniform national labor policy in industries affecting commerce, and nullified, *pro tanto*, Board and district court action in the cases before them involving the same subject matter (R. 9).

After hearing, the District Court entered findings of fact and conclusions of law sustaining the allegations of the complaint (R. 56-60). The court found that all of the described Union activities were in furtherance of a labor dispute with Capital, that they affected commerce within the meaning of the Act, and that the Superior Court injunction regulated the same conduct which was the subject-matter of the proceeding pending before the Board. The court further found that the delivery entrance picketing appeared to constitute a violation of Section 8 (b) (4) (A) of the Act,⁵ and that the consumer entrance picketing, though not an unfair labor practice, was

⁵ The District Court made the same finding in Civil No. 14141, the suit against the Union, which, because it turned on the same facts as those underlying the instant suit, had been consolidated with the latter for purposes of hearing (R. 89). In the suit against the Union, the court then entered—at the same time that it entered the decree herein against petitioners (p. 10, *infra*)—an injunction enjoining the Union, pending final Board adjudication, from engaging in those of its activities, i. e., the delivery entrance picketing, which appeared to constitute a violation of Section 8 (b) (4) (A) of the Act (R. 76-77). The Union took no appeal.

Subsequently, the Board issued a Decision and Order finding that the delivery entrance picketing did in fact violate Section 8 (b) (4) (A), and entered an appropriate cease and desist order. *Capital Service, Inc.*, 100 NLRB 1092, motion to modify denied, 106 NLRB No. 27 (July 17, 1953). A petition for review of the decision insofar as it declined to find that the consumer entrance picketing was also an unfair labor practice was filed by Capital in the Court of Appeals for the Ninth Circuit, but was thereafter voluntarily dismissed.

within the field covered by the Act and thus preempted thereby (R. 59-60). Accordingly, the court concluded that the Superior Court was without jurisdiction to restrain any of these Union activities, and that its action in doing so invaded the exclusive jurisdiction of the Board and the District Court (R. 60).

In addition, the District Court concluded that the Board was vested with authority to institute the instant suit for the purpose of vindicating the policies of Congress and protecting its own jurisdiction; that a preliminary injunction, pending final determination of the suit, was "necessary and proper to avoid further irreparable impairment of the Congressional objective of a uniform national labor policy in industries affecting commerce, to protect the exclusive jurisdiction of the Board under the Act, and to effectuate the decree of this Court entered simultaneously herewith in Case No. 14141," the suit against the Union; and that "Section 2283 of the Judicial Code does not bar the issuance of said preliminary injunction, for it has no application where, as here, an exclusive Federal jurisdiction is vindicated" (R. 60).

The District Court entered a preliminary injunction enjoining petitioners from "enforcing or seeking to enforce, or in any other manner giving continued effect to or availing themselves of the benefits" of the decree issued by the Superior Court. They were also enjoined "from taking or applying for any further proceedings

in said Superior Court the effect of which would be to enjoin or restrain" the Union "from engaging in peaceful picketing or other concerted activities affecting the customers of Capital Service, Inc., and their suppliers, and which are carried on pursuant to a labor dispute with Capital Service, Inc." (R. 61).

C. THE DECISION OF THE COURT OF APPEALS

On appeal, the Court of Appeals agreed that regulation of all the conduct covered by the Superior Court injunction was preempted by the Act.⁶ Accordingly, it affirmed the order of the District Court, stating briefly that "the control by the federal tribunals is exclusive" (R. 174-175).

SUMMARY OF ARGUMENT

A. The authority of the Board to initiate this suit is clear. The Act by implication authorizes the Board to institute such legal proceedings as are necessary to protect its jurisdiction and to effectuate its statutory duty to administer the Act so as to carry out the policy of Congress.

⁶ The court below, however, differed in part with the District Court over the extent to which the Act prohibited the Union activities involved. It agreed that the delivery entrance picketing constituted an unfair labor practice under Section 8 (b) (4) (A), but concluded that the consumer entrance picketing, rather than being conduct protected by Section 7 of the Act, also constituted an unfair labor practice, violating Section 8 (b) (1) (A). Both courts agreed, however, that all of the picketing constituted activities over which the Act gave the Board exclusive jurisdiction.

Numerous cases have upheld the Board's right to seek judicial remedies necessary to prevent frustration of the Act's purposes (*e. g.*, *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 269-270; *Nathanson v. National Labor Relations Board*, 344 U. S. 25). As is reflected in the order allowing certiorari, the union conduct made subject to the state court injunction has been foreclosed to state regulation; the federal regulatory procedure established in the Act is exclusive. Unless the Board were empowered to take appropriate steps to vindicate the supremacy of the Act here, the effectiveness of the exclusive federal regulation would be left to the fortuity that private litigants would raise that issue in local proceedings or appeal adverse decisions. Moreover, the federal scheme of regulation is impaired by issuance of a temporary injunction even though it may later be set aside by a higher state court. Sweeping injunctions against all picketing, however temporary in duration, tend to "make the issue of final relief a practical nullity" (Frankfurter and Greene, *The Labor Injunction* (1930), p. 200).

B. The District Court properly asserted jurisdiction of this case under Section 10 (1) of the Act and Sections 1337 and 1651 of the Judicial Code. Section 10 (1) provides that the Board's General Counsel, if he finds that an unfair labor practice complaint, ^{should issue} under Section 8 (b) (4) (A), *inter alia*, shall file a petition in the

proper District Court "for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the District Court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law * * *." Section 1337 of the Judicial Code is applicable because the Board's complaint showed on its face that the cause of action arose "under [an] Act of Congress regulating commerce" within the meaning of that Section.

Section 1651 is also relevant to this case. The state court order dealt with and treated differently the same activities which were before the District Court in the Section 10 (1) proceeding. In order to preserve the district court's jurisdiction and make effective such order as it might finally enter, it was necessary to neutralize the effects of the state court decree. Accordingly, the District Court properly invoked its power, under Section 1651, to "issue all writs necessary or appropriate in aid of [its] jurisdiction * * *"

C. The grant of injunctive relief by the district court constituted a proper exercise of its equitable powers. The state court order, in regulating conduct which was intended to be regulated exclusively under the provisions of the Act, operated as an effective bar to the application of Congressional policy in this case, and accordingly

resulted in irreparable harm to that policy. Indeed, it represented not only a substitution of local procedures for those provided in the Act, including the discretionary functions of the General Counsel of the Board in unfair labor practice cases, but in addition it reflected a contrary substantive evaluation of the case than that made with respect to the identical factual situation under the provisions of the Act.

The fact that the question of federal supremacy could have been raised in the state court does not preclude jurisdiction in the district court to grant the Board's request for an injunction. The Board was not a party to the proceeding in the Superior Court, and neither intervention by the Board nor the possibility that the private adversaries might litigate the question furnishes adequate protection for the public rights created by the Act. Moreover, it is plain that the important and often decisive function of determining the facts in labor disputes covered by the Act was meant to be placed in the specialized tribunals designated by Congress, not in local tribunals.

Neither does the pendency of state litigation require, in this case, that the federal court should have stayed its hand with respect to proceedings involving the same subject matter. Deference to local tribunals by a federal court is not required where, as here, the orderly functioning of an exclusive scheme of federal regulation is at stake, and

where the continuing existence of an outstanding inconsistent state court injunction would be harmful not only to the rights of the parties "but to the public interest which Congress deemed it wise to safeguard" (*Public Utilities Commission v. United Fuel Gas Co.*, 317 U. S. 456, 469). In such circumstances a federal court is clearly empowered to grant appropriate equitable relief.

D. The prohibition against federal court injunctions "to stay proceedings in a State court," contained in Section 2283 of Title 28 of the United States Code does not operate as a bar to the District Court's injunction in this case. Before this Section was amended in 1948, it was established that its predecessor, Section 265 of the Judicial Code of 1911, had application only where, unlike here, in deference to principles of comity it would be appropriate to avoid "needless friction between two systems of courts having potential jurisdiction over the same subject-matter" (*Hale v. Bimco Trading Co.*, 306 U. S. 375, 378). There is no occasion for an application of this rule here, for jurisdiction over the subject matter in this case has been foreclosed to the states by Congress, and has been vested exclusively by the Act in a federal agency and the federal courts (*Bowles v. Willingham*, 321 U. S. 503, where Section 265 was held not to preclude an injunction staying state court proceedings because, *inter alia*, jurisdiction over the subject matter of the state court suit had

been vested exclusively in the Emergency Court of Appeals).

The replacement in 1948 of Section 265 by the present Section 2283 in no way affected the inapplicability of the provision to situations, like this, where federal jurisdiction is exclusive and not concurrent. The principal purpose of the changed wording was to make explicit that federal courts were empowered to grant such injunctions against state court proceedings where "expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." These express exceptions to Section 2283 remove this case from its general prohibition. Because the outstanding state court order threatened the efficacy of the District Court's injunction in the Section 10 (1) proceeding, restraint of that order was "necessary in aid of [the district court's] jurisdiction" and "to protect or effectuate its judgments," within the authorization of the second and third exceptions to Section 2283. Moreover, the district court's injunction also falls within the excepting language which permits restraint of state court proceedings where such action is "expressly authorized by Act of Congress." For the Act constitutes express legislation foreclosing state proceedings dealing with the subject matter covered by the Act, and establishing an exclusive scheme of federal regulation enforceable, where it may become necessary, by appropriate injunctive relief di-

rected against state court proceedings (*Bowles v. Willingham, supra; Porter v. Dicken*, 328 U. S. 252, 255).

ARGUMENT

THE FEDERAL DISTRICT COURT, UPON APPLICATION OF THE BOARD, COULD PROPERLY ENJOIN PETITIONERS FROM ENFORCING THE INJUNCTION OBTAINED FROM THE STATE COURT

INTRODUCTION

Under the limited grant of certiorari the only question presented for review by this Court is whether the District Court, acting on the Board's application, had jurisdiction to enter a preliminary decree enjoining petitioners from enforcing the injunction previously issued by the Superior Court of California. The premise on which the question is based, as stated in the Court's order, is that "exclusive jurisdiction over the subject matter was in the National Labor Relations Board (*Garner v. Teamsters Union*, 346 U. S. 485)." It is not open to question, therefore, that here, as in the *Garner* case, the subject-matter of the controversy rested exclusively within federal jurisdiction and "the grievance was not subject to litigation in the tribunals of the State" (346 U. S. at 501).

In this fundamental respect, i. e., the lack of jurisdiction in the state courts, this case and *Garner* are alike. In each case the petitioners obtained from a state court an injunction which

it was beyond the power of that court to grant. This case differs from *Garner* only in the manner in which it was sought to annul the unauthorized exercise of jurisdiction by the state trial court. In the *Garner* case the respondents appealed to the Supreme Court of Pennsylvania, which reversed with directions that the complaint be dismissed for want of jurisdiction (373 Pa. 19, 94 A. 2d 893). When the case came before this Court on certiorari, the Board filed a brief as *amicus curiae* urging affirmance. This Court, agreeing with the Supreme Court of Pennsylvania that there was a lack of jurisdiction in the state courts, affirmed (346 U. S. 485).

In the *Garner* case no charge based on the alleged unfair labor practices (constituting the same misconduct which gave rise to the suit in the state court) had been filed with the National Labor Relations Board; and no administrative proceedings concerning the matter were before the Board at any time during the state litigation. In this case, however, a charge of unfair labor practices was filed by petitioners with the Board on February 21, 1952, three days after they instituted suit in the Superior Court (R. 11-16). The matter was thus pending before the Board when, on April 3, 1952, the Superior Court issued its decree (R. 40-42). The Board was not a party to the state court proceeding, and the unions enjoined by the decree of the Superior Court took no appeal. Instead, unlike the

Garner case, the forum was moved immediately to the federal tribunals. On May 14, 1952, the Board's Regional Director issued an unfair practice complaint against the Union, and on the same day, for the purpose of protecting the Board's jurisdiction and preserving the exclusive regulatory scheme of the Act, filed the instant suit and the companion suit against the Union in the District Court (R. 1-10, 66-70).

The issue thus presented, which was not involved in the *Garner* case, is whether a federal district court, upon appropriate application by the Board in a case where the same subject-matter is before both the Board and a state court, can enjoin enforcement of the state court decree in order to preserve and vindicate the Board's exclusive jurisdiction. The affirmative answer given by both courts below is, we submit, entirely correct. As we show below, it is supported by the provisions and policy of the Labor-Management Relations Act and by the applicable provisions of law bearing on the jurisdiction and powers of the federal district courts to grant such relief. Section 2283 of the Judicial Code, we further submit, clearly does not preclude injunctive relief against state court proceedings in circumstances such as are here involved.

A preliminary question, to which we now turn, is whether the Board had capacity to bring this case in the District Court.

by this Court (*Garner v. Teamsters Union*, 346 U. S. 485, 490):

Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. * * *

Moreover, to insure the attainment of this objective, Congress banned all State regulation—whether by legislature, administrative agency, or court^{*}—in “the field that the act covers” (H. Rept. No. 245, 80th Cong., 1st Sess., 44). As the court below recognized (R. 175), Section 10 (a) of the Act makes such intention manifest, by providing that the Board’s “power shall not be affected by any other means of adjustment or prevention,” and by specifying the limited cir-

^{*} See *Auto Workers v. O'Brien*, 339 U. S. 454; *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767; *Garner v. Teamsters Union*, 346 U. S. 485.

circumstances under which the Board alone may grant the States authority to regulate in the pre-empted federal field. (See also *Bus Employees v. Wisconsin Board*, 340 U. S. 383, 397, n. 23.)

The supremacy of the Act in the field which it occupies could be readily impaired unless the Board were empowered to take appropriate legal steps to check encroachments on its exclusive jurisdiction. Thus, were the Board helpless to seek elimination of such encroachments by a state court, their elimination would depend entirely upon such fortuitous factors as whether the defendant contested the state court action on the ground of federal supremacy, or whether the defendant had the desire and the funds to appeal the action to a higher state court, and, if need be, to this Court. Without power in the Board to take appropriate steps to vindicate the federal regulatory authority, an absence of any one of these factors would result in effective state interference with the Board's exclusive jurisdiction. The Board "as the representative of the public has an interest apart from that of the individuals affected" (*Hopkins Federal Savings & Loan Ass'n v. Cleary*, 296 U. S. 315, 339-340). There is no reason to suppose that Congress meant in this situation to depart from the basic purpose of entrusting "the vindication of the desired freedom of employees * * *, by reason of the recognized public interest, to the public agency the Act creates," and to permit a haphazard enforcement

of the law in local tribunals by private litigants whose interests do not extend beyond their adversary status. *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 266.⁹

Moreover, even where there is a successful appeal to a higher state court, made on grounds of federal supremacy, from a state court order which improperly regulates conduct covered by the Act, federal labor relations policy nonetheless is seriously harmed. For Congress, in the Act, has carefully balanced the rights and obligations of labor organizations in their relations with employers and employees. And, as Congress well knew when it enacted the Norris LaGuardia Act in 1932,¹⁰ even a temporary restraint on the activities of a union, in a test of its economic strength against an employer, is normally sufficient to terminate these activities. "The preliminary proceedings, in other words, make the issue of final relief a practical nullity. * * * The injunction cannot preserve the so-called *status quo*; the situation does not remain in equilibrium awaiting judgment upon full knowledge." Frankfurter and Greene, *The Labor Injunction* (1930),

⁹ Congressional recognition of the importance of the participation of government agencies in litigation involving statutes which they administer is reflected in Rule 24 (b) of the Federal Rules of Civil Procedure. Provision is there made for intervention by such agencies in district court litigation where a claim or a defense relies on such statutes. See Note, 65 Harv. L. Rev. 319, 321, 327-328.

¹⁰ 47 Stat. 70, 29 U. S. C. 101, *et seq.*

pp. 200-201. In this case, for example, the state court order forbade all picketing by the Union. To the extent that this inclusive ban threw federal regulation out of balance, its deleterious impact was likely to be permanent, unless its effectiveness could expeditiously be nullified.¹¹ In these circumstances, it matters little that opportunity was available for the Union to appeal the order directed against it to a higher state court, and, if need be, to this Court. The delay inherent in such review procedures renders them useless to restore the balance where Congress placed it.¹²

¹¹ The validity of this consideration is well illustrated in a study made of injunctions issued by Department 34 of the Superior Court of California, where the State injunction in this case was issued. Of a total of 120 suits for injunctions brought by employers which were studied, only 4 reached the trial stage. Aaron and Levin, *Labor Injunctions in Action*, 39 Calif. Law Rev. 42, 53. While California law would have afforded the Union in this case an opportunity to appeal from the Superior Court's order granting a preliminary injunction (Section 963 of California Code of Civil Procedure; *Burton v. Tearle*, 7 Cal. 49, 52, 59 P. 2d 953), the order would not automatically have been stayed (*Canavarrro v. Local Union No. 9*, 15 Cal. 2d 495, 101 P. 2d 1081). And as the Supreme Court of California has observed, a "super-sedeas [to stay the effect of preliminary injunctions] will not be granted except in rare circumstances." *Id.* at 101 P. 2d 1082.

¹² These considerations are accentuated by this Court's recent decision in *Montgomery Building Trades v. Ledbetter*, 344 U. S. 178, holding that a state court preliminary injunction similar to that here was not a "final order" within the meaning of 28 U. S. C. 1257. Under this holding, it would appear that, if a state court preliminary injunction which

The statutory implication of authority in the Board to take legal steps to protect its exclusive jurisdiction under the Act is particularly clear where, as here, the conflicting state proceeding involves the identical conduct and parties which are at the same time involved in proceedings before the Board. Thus, in this case Capital filed a charge with the Board that the Union, by the same conduct alleged in the complaint in the state court, had committed an unfair labor practice under the Act. The General Counsel of the Board, in accordance with statutory provisions, investigated the charge, and administratively determined that the Union's activities in part constituted a violation of Section 8 (b) (4) (A) of the Act and in part were protected by Section 7 of the Act. An unfair labor practice complaint was thereupon issued, limited to the asserted violation of Section 8 (b) (4) (A), and pursuant to the requirement of Section 10 (1), a temporary injunction was sought and obtained from the district court pending the Board's hearing and decision in the matter.

The existing state court injunction against all of the Union's activities in effect had substantially predetermined the issues before both the District Court and the Board, and in a manner which invaded an exclusive federal jurisdiction were ever to be reviewed by this Court, this could only be achieved by means of the procedure utilized herein, i. e., an independent equity suit in the federal district court.

ner that was inconsistent with the District Court's decision in the suit against the Union. In short, as matters stood, the statutory authority of the Board and the federal district court to protect the lawful activities of labor organizations and to remedy unfair labor practices committed by them had been nullified by the state court. If the Board were not authorized to invoke the equity powers of the district court to remedy this situation, the policy of the Act would plainly and irreparably have been impaired.

The existence of Board capacity to initiate suits in similar situations has consistently been recognized. Thus, lower federal courts have affirmed the Board's "power to sue in the district court to enjoin" state action where state regulatory agencies have invaded either the Board's exclusive unfair labor practice jurisdiction (*National Labor Relations Board v. New York Labor Relations Board*, 106 F. Supp. 749 (S. D. N. Y.)), or the Board's exclusive jurisdiction to conduct representation proceedings (*National Labor Relations Board v. Industrial Commission of Utah*, 84 F. Supp. 593 (D. Utah), affirmed, 172 F. 2d 389 (C. A. 10)). Similarly, the Board's right to seek injunctions from courts of appeals against attaching creditors of the recipients of back pay awards, following decree enforcing those awards, has been upheld (*National Labor Relations Board v. Underwood Machinery Co.*, 198 F. 2d 93 (C. A. 1);

National Labor Relations Board v. Sunshine Mining Co., 125 F. 2d 757 (C. A. 9)).

The same has been true of other Federal regulatory agencies. The Securities and Exchange Commission, because of its "interest in the maintenance of its statutory authority and the performance of its public duties", has been held to have authority, although not expressly granted it, to intervene "to prevent reorganizations, which should rightly be subjected to its scrutiny, from proceeding without it" (*Securities and Exchange Commission v. United States Realty and Improvement Co.*, 310 U. S. 434, 460). The Wage and Hour Administrator's authority to apply to a federal district court for an injunction to enforce an industry wage order has been upheld, even though the Fair Labor Standards Act does not expressly so provide, on the ground that such authority was essential "in the administration of the statute, to the end that the Congressional purposes underlying its enactment shall not be thwarted" (*Walling v. Brooklyn Braid Co.*, 152 F. 2d 938, 940-941 (C. A. 2)).

In sum, capacity in the United States or one of its agencies to seek the injunctive aid of a court of equity is implied, unless the applicable statutory provisions forbid, where such action is required "in removing unlawful obstacles to the fulfillment of its obligations." *United States v. Minnesota*, 270 U. S. 181, 194.

B. THE DISTRICT COURT HAD JURISDICTION OVER THE SUBJECT
MATTER OF THIS PROCEEDING

The District Court rested its assertion of jurisdiction over this case on Sections 1337 and 1651 of Title 28 of the United States Code (R. 59). These provisions, coupled with Section 10 (1) of the Act, furnish unequivocal support for the jurisdiction of the district court to enter the decree here involved.

1. Section 1337 (Appendix, *infra*, p. 68) extends original jurisdiction to the district courts "of any civil action or proceeding arising under any Act of Congress regulating commerce * * *." The Board's cause of action in this case is based upon the alleged illegality under the provisions of the National Labor Relations Act, an act regulating commerce, of a state court order purporting to regulate conduct for which Congress, in the Act, has established an exclusive federal scheme of regulation. Thus, the Board's complaint alleges that a substantial amount of raw materials are purchased by Capital from sources outside the State of California; that the retail food markets served by Capital also do a large amount of interstate business; and that in consequence Capital's operations affect commerce within the meaning of the Act (R. 2-3). It is further alleged that all of the union conduct which the state court, by its order, had undertaken to regulate was within the field covered exclusively by the Act, and for that reason "the

Superior Court decree is contrary to the provisions of the Act * * *” (R. 8-9, 7). Without more, it is plain that this is a “civil action or proceeding arising under [an] Act of Congress regulating commerce,” and that the district court was therefore vested with jurisdiction over it by Section 1337.

The correctness of this conclusion is confirmed by *A. F. of L. v. Watson*, 327 U. S. 582. The complaint there, as here, alleged that a state had undertaken to prohibit certain kinds of union activities which were governed by the provisions of the National Labor Relations Act. In upholding the assertion of federal jurisdiction to decide the controversy, this Court concluded (p. 591) that “since the right asserted is derived from or recognized by a federal law regulating commerce, * * * a suit to protect it against impairment by state action is a suit ‘arising under’ a federal law ‘regulating commerce’ ” (citing cases). And see *In re Standard Gas & Electric Co.*, 139 F. 2d 149, 152 (C. A. 3); *Board of Governors of Federal Reserve System v. Transamerica Corp.*, 184 F. 2d 311 (C. A. 9).

2. Section 10 (1) of the Act (Appendix, *infra*, pp. 67-68) provides that whenever the General Counsel of the Board has reasonable cause to believe that a complaint should issue, charging an unfair labor practice within Section 8 (b) (4) (A), *inter alia*, he shall file a petition on behalf of the Board in the proper district court “for

appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law * * *." The District Court's invocation of Section 1651, the all-writs section (Appendix, *infra*, p. 68), as an alternative basis for its jurisdiction, is premised upon the necessity of protecting its injunction issued pursuant to Section 10 (1) of the Act in the unfair labor practice case involving the same subject-matter as this case. As we have shown (*supra*, pp. 6-7), the General Counsel of the Board issued a complaint alleging that part of the Union's activities constituted an unfair labor practice prohibited by Section 8 (b) (4) (A) of the Act, and, in accordance with the requirements of Section 10 (1), simultaneously applied for and obtained a temporary injunction against the 8 (b) (4) (A) aspect of the Union's activities. In entertaining the General Counsel's request for this temporary injunction, the District Court was exercising its exclusive primary jurisdiction, to the extent specified in Section 10 (1), to determine how much of the Union's activities should be prohibited by injunction, pending the final adjudication by the Board with respect to the alleged unfair labor practices. (See R. 59.) The outstanding state court order, however, seriously

threatened the efficacy of the District Court injunction. For the Superior Court of California, in addition to invading the field thus reserved to the district court and imposing its own sanctions, had prohibited *all* of the Union's activities, while the district court's injunction prohibited them only in part.

In these circumstances, it was both necessary and appropriate for the District Court to take steps to protect its jurisdiction and effectuate its judgments. The power to do so is conferred by Section 1651, which provides that "* * * all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions agreeable to the usages and principles of law." The application of this provision in situations where, as here, injunctive protection of a federal court's jurisdiction is essential has long been settled. (See, e. g., *Continental Bank v. Rock Island Ry.*, 294 U. S. 648, 676; *Toledo Co. v. Computing Co.*, 261 U. S. 399, 426; *Merrimack River Savings Bank v. City of Clay Center*, 219 U. S. 527, 534-535; *National Labor Relations Board v. Underwood Machinery Co.*, 198 F. 2d 93 (C. A. 1); *In re Standard Gas & Electric Co.*, 139 F. 2d 149, 152 (C. A. 3). Cf. *Board of Governors of Federal Reserve System v. Transamerica Corp.*, 184 F. 2d 311 (C. A. 9).)

C. ISSUANCE OF THE INJUNCTION BY THE DISTRICT COURT WAS
A PROPER EXERCISE OF ITS EQUITY JURISDICTION

Having found that the Superior Court of California was without jurisdiction to restrain the Union activities in this case, and that in doing so it had invaded a field for which Congress had provided a system of exclusive federal regulation, the District Court concluded that the exercise of its equity powers was both necessary and appropriate. As stated in its Conclusions of Law (R. 60):

A preliminary injunction as prayed, pending final determination of the complaint, is necessary and proper to avoid further irreparable impairment of the Congressional objective of a uniform national policy in industries affecting commerce, to protect the exclusive jurisdiction of the Board under the Act, and to effectuate the decree of this Court entered simultaneously herewith in Case No. 14141-HW [the suit against the Union].

In large measure, the reasons supporting the District Court's conclusion in this respect are the same as those which have been discussed, *supra*, pp. 20-29), in showing that the Board is empowered to bring this action. For just as the necessity for equity relief to prevent frustration of the Act's provisions properly serves as the basis for implying authority in the Board to seek such relief, so does the same impelling necessity warrant the exercise of the District Court's inherent equity

permitted to stand, for in that case the state court injunction has, as a practical matter, supplanted federal regulation.

The irreparable character of the inroad thus made into federal policy is emphasized by the decisive significance, to which we have alluded *supra*, p. 25, which even a temporary restraint has in the field of labor-management relations. Eventual vindication of the principle of federal supremacy is rarely, if ever, sufficient to offset in the particular case the impact of an effective sanction, timed, as was the state court order here, to put an immediate stop to all union activities.¹⁴ In these circumstances we think it clear that the frustration of federal policy which the state court order accomplished represented an appropriate occasion for invoking the inherent equity powers of the District Court.

Here, as in *A. F. L. v. Watson*, 327 U. S. 582, a showing has been made that State action has imposed standards of conduct which conflict with those established in the Act, and that the result is "repercussions on the relationship between capital and labor as to cause irreparable damage" (327 U. S. at 595). In both cases the harm, although very real, is to "matters involving intangible values," and not susceptible of remedial action at law. *Id.*, at 594. For these reasons, we be-

¹⁴ See also p. 25, n. 12, *supra*.

lieve that here, as in the *Watson* case, there is "a cause of action in equity" (*Id.* at 595).¹⁵

Although the State court litigation was open to the issue of exclusive Federal jurisdiction, that factor does not weaken the necessity for intervention by a Federal court exercising its equity powers.¹⁶ As we have already pointed out *supra*, there is no certainty that the private party made defendant in an action of this kind, here the Union, will contest an application for State action on this ground.¹⁷ The statutory importance of regulating the conduct of employers and labor

¹⁵ There is, of course, no occasion here to invoke the rule recently applied by this Court in *Public Service Commission v. Wycoff Co.*, 344 U. S. 237, that injunctive relief is inappropriate where "there is no proof of any threatened or probable act of the defendants which might cause the irreparable injury essential to equitable relief * * *" (344 U. S. at 241). See also *Public Utilities Commission v. United Air Lines*, 346 U. S. 402. As we have shown, the injury in this case was immediate and irreparable upon issuance of the state court order, and continued until the injunction was issued here by the District Court.

¹⁶ The adequacy of a state court remedy in any event would not militate against the exercise of equity powers by a federal court. *Petroleum Exploration, Inc. v. Public Service Commission*, 304 U. S. 209, 217.

¹⁷ The memorandum opinion of the Superior Court accompanying the issuance of its injunctive order in this case reveals no awareness of the preemption issue (R. 42-45). Following the Superior Court's decision the Union moved to vacate the order on the ground, *inter alia*, "that the Court was without jurisdiction * * * [and] that the National Labor Relations Board has assumed jurisdiction of all the matters at issue herein" (R. 46). However, the motion was summarily denied (see p. 6, *supra*).

unions in accordance with policies deemed by Congress to be in the public interest cannot always be expected to coincide with the litigation strategy and tactics which private defendants may feel most beneficial to their own interests. And, while the Board's representations to a State court might be fully adequate, there is no certainty that it will be able to make its position known. In the first place, the Board may not have notice of State court actions within the field covered by the Act until after the court has acted and the time for "intervention" has run out¹⁸ (Cf. *Porter v. Lee*, 328 U. S. 246). But even if there is ample notice, the Board is not made a party in the usual case—it was not in this case—and its standing to participate in the proceeding depends on the intricacies of local practice. In this instance, for example, intervention before the Superior Court may be accomplished only "by leave of the court," and this may be done only "before trial." Section 387, California Code of Civil Procedure. (See *Allen v. California Water and Tel. Co.*, 31 Cal. 2d 104, 107-109, 187 P. 2d 393.) Plainly, this route is too conjectural and hazardous to provide adequate protection for the public rights which the Act creates. (See *Brillhart v. Excess Ins.*

¹⁸ In this case Capital filed its complaint in the Superior Court and its charge with the Board about the same time (R. 11, 17, 37). However, the charge contained no mention of the fact that Capital was seeking similar relief in another forum.

Co., 316 U. S. 491, 495.) Particularly is this so in view of the critical importance to the effectiveness of the Federal regulatory plan, as we have shown, of an immediate and continuous application of the Act's provisions in the field it covers.¹⁹

Moreover, there is no good reason why the Board, as trustee of the public rights created by the Act, should place those rights in litigation in local tribunals where it was not made a party and is not bound by the decision, even though the effectiveness of the Act is at stake (cf. *Hale v. Bimco Trading Co.*, 306 U. S. 375, 377-378). On the contrary, the Act itself makes clear that the adjudication of its provisions is a responsibility to be borne by the Board and the federal judiciary exclusively. This is particularly important where, as in cases arising under the Act, decision is likely to turn upon the determination of facts and the evaluation of evidence. To submit what is alleged to be, as here, an unfair labor practice case to state court determination, with their "variety of local procedures and attitudes toward labor controversies" (*Garner, supra*, p. 22), is to subject the state courts to a burden which Congress has spared them. The possibility or

¹⁹ Even more hazardous and inadequate is the opportunity which may be afforded to the agency to appear as *amicus curiae* for "the original parties may rest content with a resolution of the question of law in the trial court which the agency may find prejudicial, and an amicus cannot appeal" Berger, *Intervention by Public Agencies In Private Litigation In The Federal Courts*, 50 Yale L. J. 65, 68.

hope of eventual review of the federal issues by this Court counts for little where the factual findings are made by nonfederal tribunals which are less "at home" in this specialized field than the agencies which Congress has designated to carry out its mandate (Cf. Frankfurter, J., concurring in *Alabama Public Service Commission v. Southern Ry. Co.*, 341 U. S. 341, 361); *Prentis v. Atlantic Coast Line*, 211 U. S. 210, 228.)

The leading cases of *Lord Portarlington v. Soulby*, 3 *Mylne & Keen* 104, and *Kempson v. Kempson*, 58 N. J. Eq. 94, as Dean Ames stated, "illustrate the inherent power of equity to restrain a person within its jurisdiction from taking legal proceedings without the jurisdiction. Whether this power should be exercised in a particular case is determined by considerations of fitness and expediency." See Chafee and Simpson, *Cases on Equity*, Vol. I, pp. 161-175. In deference to "the appropriate relationship between federal and state authorities functioning as a harmonious whole", *Chicago v. Fieldcrest Dairies*, 316 U. S. 168, 172-173, a federal court may decline to grant such relief where, unlike here, it must first construe a state statute or make a decision with respect to state law or policy which either is or may be presented before local tribunals which have the final word on such matters. (See, e. g., *Alabama Public Service Commission v. Southern Ry. Co.*, 341 U. S. 341; *Spector Motor Co. v. McLaughlin*, 323 U. S. 101; *Burford v. Sun Oil Co.*, 319 U. S. 315; *Douglas v. Jeannette*,

319 U. S. 157; *Watson v. Buck*, 313 U. S. 387; *Railroad Commission v. Pullman Co.*, 312 U. S. 496. See Note, 56 Harv. L. Rev. 825.) Even in that situation "Equitable relief may be granted * * * when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts,' is convinced that the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts' " (*Alabama Public Service Commission v. Southern Ry. Co.*, 341 U. S. 341, 349).²⁰

Thus, in *Public Utilities Commission v. United Fuel Gas Co.*, 317 U. S. 456, the overriding importance of protecting the federal rights involved, which, as in this case, were derived from federal regulatory legislation that was meant to be exclusive in its field, was held by this Court to warrant the issuance of injunctive relief notwithstanding the existence of state litigation relating to the same subject matter. The principal issue on the merits in that case was whether the Natural Gas Act (52 Stat. 821, 15 U. S. C. 717) made unlawful the attempt of a state commission, by appropriate proceedings before it, to regulate interstate gas rates. This Court ruled in the affirmative. In reaching this issue, however, the Court rejected the contention that the state might fix

²⁰ Compare *Markham v. Allen*, 326 U. S. 490, 495; *Meredith v. Winter Haven*, 320 U. S. 228, 235-236; *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19.

rates for interstate gas companies prior to the enactment of the federal legislation, holding that under state law there was no authority to fix rates retroactively, and that this would be the necessary effect of the pending rate proceeding in the state. Having concluded that the state proceeding invaded a federally preempted field, the Court turned to the appropriateness of equitable relief (317 U. S. at 468-469):

It is perhaps unnecessary at this late date to repeat the admonition that the federal courts should be wary of interrupting the proceedings of state administrative tribunals by use of the extraordinary writ of injunction. But this, too, is a rule of equity and not to be applied in blind disregard of fact. And what are the commanding circumstances of the present case? First, and most important, the orders of the state Commission are on their face plainly invalid. No inquiry beyond the orders themselves and the undisputed facts which underlie them is necessary in order to discover that they are in conflict with the federal Act. If, therefore, United complies with these orders, it will be put to the expenditures incident to ascertaining the base for rate-fixing purposes—expenses which may ultimately be borne by the consuming public and which Congress, by conferring exclusive jurisdiction upon the federal regulatory agency, necessarily intended to avoid. If United does not comply with the orders, it runs the risk of

incurring heavy fines and penalties or, at the least, in provoking needless, wasteful litigation. In either event, enforcement of the Commission's orders would work injury not assessable in money damages, *not only to the appellee but to the public interest which Congress deemed it wise to safeguard* by enacting the Natural Gas Act. In these circumstances, we cannot set aside the decree of the District Court as an improper exercise of its equitable jurisdiction. [Emphasis supplied.]

Here, as in the *United Fuel* case, the encroaching state order is on its face "plainly invalid." The conflict with federal law requires "no inquiry beyond the order * * * and the undisputed facts which underlie [it]." And here, as we have shown, the continued effectiveness of the Superior Court's order would be harmful "not only to the [Union] but to the public interest which Congress deemed it wise to safeguard." On the other hand, there is even less difficulty in justifying the action of the District Court in this case than in the *United Fuel* case, for here there was no need to consider any state statutes or invoke state policy. The single issue before the District Court here was whether the federal law had foreclosed the state court action. To suggest that a federal court should defer to a state tribunal on this matter is to advocate "that the entire federal controversy * * * be ousted from the federal

courts, where it was placed by Congress" (*Propper v. Clark*, 337 U. S. 472, 491-2).²¹

Accordingly, federal courts have consistently granted preliminary injunctions in situations like this, where the Congressional objective of a uniform national labor policy is impaired by state action (*National Labor Relations Board v. Industrial Commission of Utah*, 84 F. Supp. 593 (D. Utah), affirmed, 172 F. 2d 389 (C. A. 10); *United Office and Professional Workers v. Smiley*, 77 F. Supp. 659 (M. D. Pa.); *Linde Air Products v. Johnson*, 77 F. Supp. 656 (D. Minn.); *Food, Tobacco Workers v. Smiley*, 74 F. Supp. 832 (E. D. Pa.), affirmed, 164 F. 2d 922 (C. A. 3). Cf., *All American Airways, Inc. v. Cedarhurst*, 106 F. Supp. 521 (E. D. N. Y.), affirmed, 201 F. 2d 273 (C. A. 2); *Board of Trade v. Illinois Commerce Commission*, 156 F. 2d 33 (C. A. 7), affirmed, 331

²¹ It should be emphasized that the District Court's injunction in this case, as in the *United Fuel* case (317 U. S. at 470), in no way obstructs the state court from proceeding in any other phase of the litigation before it which does not infringe upon the federal jurisdiction established in the Act. Capital's complaint before the Superior Court contained counts with respect to conspiracy in restraint of trade by retail grocery markets as well as the Union in violation of California legislation (*supra*, p. 5). The injunction issued by the Superior Court, however, was directed not against any conspiracy in restraint of trade but solely against the picketing which was the subject of the proceeding before the Board; and the injunction granted by the federal District Court in no way precludes petitioners from taking further legal action in the state courts in pursuance of their contention that such an unlawful conspiracy existed (see pp. 48-49, *infra*).

U. S. 218; *Merced Dredging Co. v. Merced County*, 67 F. Supp. 598 (S. D. Cal.)). The injury to the public interest wrought by the assertion of an infringing jurisdiction is, as we have shown, immediate, and is very likely to be permanent unless expeditiously eliminated. In sum, the District Court, which could "go much farther" in exercising its equity powers "in furtherance of the public interest than * * * when only private interests are involved" (*Virginian Ry. v. Federation*, No. 40, 300 U. S. 515, 552), properly exercised its equity jurisdiction in granting the injunctive relief here sought by the Board.

D. SECTION 2283 OF THE JUDICIAL CODE DOES NOT PRECLUDE THE INJUNCTIVE RELIEF GRANTED BY THE DISTRICT COURT

Section 2283 of the Judicial Code (28 U. S. C.) reads as follows:

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

This provision, enacted in 1948, is a revised version of Section 265 of the Judicial Code of 1911, the substance of which has been embodied in our statutes since 1793, expressing "an important Congressional policy—to prevent needless friction between state and federal courts" (*Oklahoma Packing Company v. Gas Company*, 309 U. S. 4, 8-9). See *Toucey v. N. Y. Life Ins. Co.*, 314 U. S.

118, 129-132. We shall show that: (1) the injunction obtained by the Board herein would have fallen outside the scope of Section 265; (2) the revised language of Section 2283 made no such change as would bring the injunction within the provision's ambit; and (3) in any event, the District court's injunction is saved from the ban of Section 2283 by falling within one or more of the exceptions enumerated in that section.

1. The injunction obtained by the Board would have fallen outside the scope of Section 265 of the Judicial Code of 1911

The immediate predecessor of Section 2283, Section 265 of the Judicial Code of 1911, flatly provided that—except in certain bankruptcy situations—the “writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State” (see Appendix, p. 69). Despite the provision's apparently blanket ban, it was pointed out in *Smith v. Apple*, 264 U. S. 274, 279, that “repeated decisions of this Court” have established that it “does not prohibit in all cases injunctions staying proceedings in a state court. Such injunctions may be granted, consistently with its provision, in several classes of cases.” For, as the Court explained in *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, 183 (1920), the provision was:

* * * intended to give effect to a familiar rule of comity and like that rule is limited

in its field of operation. Within that field it tends to prevent unseemly interference with the orderly disposal of litigation in the state courts and is salutary; but to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and the laws of Congress, which of course is not contemplated. As with many other statutory provisions, this one is designed to be in accord with, and not antagonistic to, our dual system of courts. * * *

And see *Hale v. Bimco Trading Co.*, 306 U. S. 375, 378:

That provision is an historical mechanism * * * for achieving harmony in one phase of our complicated federalism by avoiding needless friction between two systems of courts having potential jurisdiction over the same subject-matter. * * *²²

²² Note also the following conclusion of Taylor and Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 Yale L. J. 1169, 1196 (1933):

The very nature of the problem is such that to lay down a rigid rule governing the right of a federal court to decline to exercise jurisdiction in deference to a state court is neither practicable nor desirable. Necessarily, much must be left to depend upon whether or not the facts of a particular case present a situation in which to take jurisdiction would be to interrupt the harmonious concurrent activity of federal and state tribunals which the principles of comity are designed to promote, or would be to run counter to the policy of non-interference which the successful maintenance of a dual system of courts requires. [Footnotes omitted.]

one ground for its decision (321 U. S. at 510-511):

As we recently held in *Lockerty v. Phillips*, 319 U. S. 182, 186, 187, Congress confined jurisdiction to grant equitable relief [against a maximum rent order] to [the Emergency Court of Appeals] and withheld such jurisdiction from every other federal and state court. Congress thus preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts. The rule expressed in § 265 which is designed to avoid collisions between state and federal authorities (*Toucey v. New York Life Ins. Co.* [314 U. S. 118]) thus does not come into play. [Footnote omitted.]²³

Similarly, the Court of Appeals for the Fourth Circuit applied the same principle in concluding that Section 265 did not preclude the Price Administrator from obtaining a federal injunction against a state court eviction order which conflicted with the paramount federal regulations on that subject (*Brown v. Wright*, 137 F. 2d 484).

²³ The Court further predicated its holding on the fact that, since the action of the state court also constituted a violation of the federal rent regulations and Section 205 (a) of the Emergency Price Control Act empowered the Price Administrator to seek injunctive relief against such violations in either federal or state courts, this Section constituted an implied legislative amendment to Section 265. This ground, however, was alternative to, and independent of, the exclusive jurisdiction ground discussed above. See *Porter v. Dicken*, 328 U. S. 252, 255; *Fleming v. Rhodes*, 331 U. S. 100, 107-108.

Speaking through Chief Judge Parker, the court stated (137 F. 2d at 488):

With respect to section 265 of the Judicial Code, we do not think that section may properly be construed as forbidding the granting of an injunction to restrain interference by state courts with the enforcement of a federal statute by an agency to which Congress has delegated exclusive power to enforce it. The purpose of that section was to avoid unseemly conflict between the state and federal courts in ordinary litigation between private litigants, not to hamstring the federal government in the use of its own courts in the protection of its rights or the enforcement of its laws. The statute is held to have no application to injunctions issued in in rem actions to protect a res in the possession of the federal courts, although containing no express exception to that effect. *Toucey v. New York Life Ins. Co.*, 314 U. S. 118, 135 * * *. On like principle, it should have no application to injunctions issued to protect property of the federal government or the exercise of power which Congress has delegated exclusively to a federal agency. See *United States v. McIntosh*, D. C., 57 F. 2d 573. It is a matter of necessity, as well as of constitutional declaration, that the Constitution of the United States and laws passed pursuant thereto be the supreme law of the land; and it was never the intention of Congress, we think, that the

power of the federal government to enforce its laws in its own courts should be limited with respect to the use of injunctions. * * *

* * * If the Administrator were denied injunctive relief from threatened violation because of the pendency of state court proceedings and were required to intervene in such proceedings for relief, resulting delays might well render the act nugatory in states not in sympathy with the legislation. The federal government is not so impotent that it must depend upon instrumentalities of the states for the enforcement of legislation so vital; and it is not to be presumed that a general statute limiting the power of federal courts to issue injunctions was intended to apply to such cases.

These considerations also formed the basis for the Ninth Circuit's holding that Section 265 did not preclude a federal court from vindicating the exclusive jurisdiction created under the Agricultural Marketing Agreement Act (*Western Fruit Growers v. United States*, 124 F. 2d 381). In that case the Secretary of Agriculture had promulgated an order under this statute regulating the handling of certain citrus fruits. Two groups of growers affected thereby—one which had previously been enjoined by a federal district court from violating the order and the other which had not as yet—obtained an injunction in a state court blocking the administration of the Secretary's order. The United States thereupon

brought suit in the federal district court to enjoin the growers from further prosecuting their state court proceeding. In concluding that Section 265 did not bar the issuance of a federal injunction as to the second group of growers, the Court of Appeals for the Ninth Circuit first found that, in enacting the Agricultural Marketing Agreement Act, Congress had intended to preclude the state court from entertaining suits arising thereunder; it then added (124 F. 2d at 387):

Since the Federal Courts have this exclusive jurisdiction, there was no error in the District Court enjoining the prosecution of the attempted State action, under the principles announced in *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, * * *²⁴

In sum, Section 265 of the old Judicial Code, the predecessor of Section 2283, applied only to situations where both federal and state courts had concurrent jurisdiction. It did not bar a federal court from enjoining state court proceedings which, as here, invaded a field preempted by Congress. For, in these circumstances, the state court is without jurisdiction, and accordingly a stay of its action, rather than resulting

²⁴ As to the first group of growers, who had previously been subject to a federal court injunction, the Ninth Circuit rested the inapplicability of Section 265 on a different principle, i. e., an implied exception to Section 265 which permits the court first acquiring jurisdiction over a subject matter to prevent proceedings in another court which would defeat that jurisdiction. 124 F. 2d at 386.

in the evil which Section 265 was designed to avoid (i. e., needless interference with matters over which the state has a concern coequal with the federal government), is necessary to prevent state intrusion into an area closed to it. Hence, the injunction obtained by the Board herein would have fallen outside the scope of Section 265 (cf. *National Labor Relations Board v. Sunshine Mining Co.*, 125 F. 2d 757 (C. A. 9); *National Labor Relations Board v. Underwood Mach. Co.*, 198 F. 2d 93, 95 (C. A. 1)).

2. *The revised language of Section 2283 made no such change as would bring the injunction obtained by the Board within that provision*

Section 265 was replaced in 1948 by Section 2283, which incorporates three specific exceptions to the otherwise broad ban against a federal court stay of state court proceedings. The Reviser's Notes explain these changes in the provisions as follows (H. Rept. No. 308, 80th Cong., 1st Sess., A-181-A-182):

* * * * *

An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.

The phrase "in aid of its jurisdiction" was added to conform to section 1651 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.

The exceptions specifically include the words "to protect or effectuate its judgments," for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See *Toucey v. New York Life Insurance Co.*, 62 S. Ct. 139, 314 U. S. 118, 86 L. Ed. 100. A vigorous dissenting opinion (62 S. Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts, of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change.)

Therefore the revised section restores the basic law as generally understood and interpreted prior to the *Toucy* [sic] decision.

Changes were made in phraseology.

* * * * *

Professor Moore, a special consultant to the Advisory Committee which worked on the 1948 revision of the Judicial Code, sheds further light on the effect of the changes in Section 2283. Thus, referring to the three specific exceptions set forth in the section, he has stated (Moore's *Commentary on the U. S. Judicial Code* (1949), pp. 396-397):

The first exception, while stated in broader terms than its predecessor which limited itself to a reference to the Bankruptcy Act, does not, however, represent any

change in the law, for because of the antiquity of former § 379 it was agreed that any statutory authorization to enjoin state court proceedings that was subsequently enacted operated as an implied legislative amendment to it. The third exception is an express overruling of the holding of the *Toucey* case * * *, and the second exception represents a partial repudiation of the rigid philosophy underlying that case. [Footnote omitted.]

In short, the changes in Section 2283 from the former Section 265 were intended to broaden the power of the federal courts to restrain state proceedings, and only serve to make it more clear that the injunction obtained by the Board here is outside the reach of Section 2283.

3. *In any event, the instant injunction is saved from the ban of Section 2283 by falling within one or more of the exceptions enumerated in that section*

Even if, contrary to what has already been shown, the general language of Section 2283 were a bar here, we submit that the instant case falls under one or more of the three exceptions specifically enumerated therein.

First, we have established (pp. 8-9, *supra*) that the instant state court injunction restrains, in part at least, the identical conduct which the district court was asked to enjoin in the companion Section 10 (1) proceeding brought by the

Board's General Counsel against the Union, and that, unless the state court restraint on the same conduct were lifted, any decree entered by the district court would be academic and ineffectual. Accordingly, the injunction here was necessary to aid the jurisdiction of the district court in that proceeding, and it thus falls within the second and third express exceptions set forth in Section 2283, authorizing a federal court to stay proceedings in a state court "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."²⁸

Second, we believe that the injunction herein also properly falls under the first exception contained in Section 2283, which permits the grant of an injunction to stay state court proceedings where such action is "expressly authorized by Act of Congress." As the Reviser's Notes make clear (*Supra*, p. 54), this phrase was substituted for the exception in Section 265 relating to bankruptcy cases, and was intended to cover all instances, including bankruptcy, where the ban contained in Section 2283 had been superseded by express federal legislation. The statutory provisions which this Court had occasion to consider in *Toucey* as legislative "withdrawals from this

²⁸ This is highlighted by the fact that the jurisdiction of the district court here was predicated, in part, on the all writs provision of Section 1651 of the Judicial Code (pp. 31-32, *supra*). The Reviser's Notes point out (p. 54, *supra*) that the purpose of the second exception in Section 2283 was "to conform to section 1651 of this title."

sweeping prohibition [in Section 265]" (314 U. S. at 132) go far in revealing the manner in which Congress has acted to limit its scope. Significantly, an express specification of injunctive authority to stay state court proceedings has not been deemed prerequisite to finding that Congress has intended that Section 2283 shall not be applicable. See *Porter v. Dicken*, 328 U. S. 252, 255; *Bowles v. Willingham*, 321 U. S. 503, 510. For example, the Act of 1851 limiting shipowner's liability "operates as an implied legislative amendment" (*Toucey*, 314 U. S. at 133) to Section 265 because it provides that when a trustee has taken a vessel for the benefit of creditors, "all claims and proceedings against the owner or owners shall cease." 9 Stat. 635, 636. Similarly, the Court in *Toucey* viewed the Frazier-Lemke Act (47 Stat. 1473) as a legislative inroad on Section 265 because it established an exclusive federal jurisdiction to carry out its provisions, and prohibited prosecution of specified proceedings elsewhere (314 U. S. at 134). In the same manner, Section 265 was held not to apply to cases removed to federal courts, for the removal procedure contained a prohibition against state courts taking further action in cases after their removal (28 U. S. C. 1446 (e)). (314 U. S. at 133.)

It is clear, therefore, that legislative exceptions to Section 265 could be found by implication; an express reference to the inapplicability of that

Section or an express grant of injunctive power to the federal courts was not required. It was enough that there be a grant of exclusive federal authority to deal with specified subject matter. And where it is not shown that Congress intended to stay the hand of federal courts to restrain state court proceedings, the legislation may properly be said to come within the first exception to Section 2283. Compare *Cooper v. Hutchinson*, 184 F. 2d 119 (C. A. 3), with *Aultman & Taylor Co. v. Brumfield*, 102 Fed. 7 (C. C. N. D. Ohio).

Under the criteria thus established for determination of whether a federal statute may be said to modify, *pro tanto*, Section 2283, we think it clear that the National Labor Relations Act falls into the same category as the Emergency Price Control Act, the Frazier-Lemke Act, the Act of 1851 limiting shipowners' liability, and the removal statutes. For in the Labor Act Congress has established an exclusive federal jurisdiction for the regulation of the subject matter it covers, and by the same token has foreclosed the assertion of state jurisdiction in this field. Just as, for example, state court action contravenes the Congressional scheme in proceedings covered by the Frazier-Lemke Act (*Kalb v. Feuerstein*, 308 U. S. 433) and for that reason is enjoined and not subject to Section 265 (*Toucey*, 314 U. S. at 134), so too may a federal injunction be granted against state court proceedings which are in conflict with

the Labor Act's exclusive procedures. See *National Labor Relations Board v. Sunshine Mining Co.*, 125 F. 2d 757, 762 (C. A. 9); *National Labor Relations Board v. Underwood Machine Co.*, 198 F. 2d 93, 95 (C. A. 1).²⁶

²⁶ A separate reason for the non-applicability of Section 265, and, for the same reason, of Section 2283, to this case has been advanced by lower courts which have held that Section 265 does not apply to suits initiated by the United States to enforce federal statutes. (See, e. g., *Brown v. Wright*, 137 F. 2d 484, 488 (C. A. 4); *United States v. Inaba*, 291 Fed. 416 (E. D. Wash.); *United States v. McIntosh*, 57 F. 2d 573 (E. D. Va.), appeal dismissed, 70 F. 2d 507 (C. A. 4); *United States v. Babcock*, 6 F. 2d 160 (D. Ind.), modified on other grounds, 9 F. 2d 905 (C. A. 7); *United States v. Taylor's Oak Ridge Corp.*, 89 F. Supp. 28, 32 (E. D. Tenn.); *United States v. Cain*, 72 F. Supp. 897 (W. D. Mich.); *United States v. Phillips*, 33 F. Supp. 261 (N. D. Okla.), vacated on other grounds, 312 U. S. 246.) The prohibition in Section 2283, like that in Section 265, does not explicitly bar the United States from obtaining an injunction against prosecution of state court proceedings. But cf. *United States v. Parkhurst-Davis Co.*, 176 U. S. 317. As this Court has said in ruling that the procedurally analogous statute which forbids a federal court to issue injunctions in labor disputes (Norris-La Guardia Act) did not prevent the United States from securing such an injunction, "statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect" (*United States v. United Mine Workers*, 330 U. S. 258, 272). The Court added that while this rule is only one of construction, it has been held not controlling only where "there were extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute" (330 U. S. at 272-273). Here we believe that all of the material considerations furnish reasons for not subjecting the sovereign to this "restrictive statute." For, as we have

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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MARCH 1954.

shown, the effectiveness of governmental policy in the field where this case falls depends solely upon the availability to the government of its own courts for the vindication of that policy (Cf., *United States v. Inaba*, *supra*, at p. 418-419; *United States v. Babcock*, *supra*, at p. 161. Compare *In re Debs*, 158 U. S. 564, 584).

There can be no question, of course, that the Board, as an agency of the United States created to administer the policy of the United States in the field covered by the Act, must be considered in the same light as the sovereign for the purpose of construing the applicability of Section 2283 to the sovereign (Cf., *Nathanson v. National Labor Relations Board*, 344 U. S. 25, 27-28; *United States v. Remund*, 330 U. S. 539, 541-542; *United States v. Emory*, 314 U. S. 423).

ployees in the exercise of the rights guaranteed in section 7: * * *

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; * * *

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting

commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The jurisdiction of the court shall be exclusive and its judgment

and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the

Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * * *

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

* * * * *

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including

the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: * * * In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

Title 28, U. S. Code

SEC. 1337. COMMERCE AND ANTITRUST REGULATIONS.

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

SEC. 1651. WRITS.

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

SEC. 2283. STAY OF STATE COURT PROCEEDINGS.

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where neces-

sary in aid of its jurisdiction, or to protect or effectuate its judgments.

Section 265 of the Judicial Code of 1911, 36 Stat. 1162, 28 U. S. C. 379 (1940 ed.), provided:

The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

SUPREME COURT OF THE UNITED STATES

No. 398.—OCTOBER TERM, 1953.

Capital Service, Inc., A California Corporation, etc., et al., Peti- tioners, v. National Labor Relations Board.	} On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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[May 17, 1954.]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner manufactures and distributes bakery products in California. A union sought unsuccessfully to organize its employees. Thereupon, the union sought to enlist the aid of purchasers and consumers of petitioner's products. Agents of the union requested retail stores not to handle petitioner's products and stated that if they continued to do so, a picket line would be set up. Some stores acquiesced; others did not. The union placed pickets at the entrances of the latter stores, with the result that many deliveries were interrupted and some employees of other employers refused to cross the picket lines.

Petitioner made two counter moves. First, it filed suit for an injunction against the union in the California courts. A few days later it filed a charge of an unfair labor practice against the union with respondent. Each had as a basis the same conduct of the union.

On April 7, 1952, the California court issued a preliminary injunction against the union, banning all picketing of retail stores. On May 14, 1952, the Regional Director of respondent concluded, after investigation, that insofar as the conduct of the union involved merely an appeal to customers and to the public in general, it was lawful

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under the National Labor Relations Act, as amended, 49 Stat. 449, 61 Stat. 136, 29 U. S. C. § 151 *et seq.*; but that it was unlawful, insofar as it induced or encouraged employees of employers other than petitioner to refuse to perform services at the picketed places. The Regional Director, acting on behalf of the General Counsel, issued an unfair labor practice complaint against the union on that limited basis. On the same day, he petitioned the Federal District Court for an injunction restraining such conduct of the union, pending final adjudication by the Board, as required by § 10 (1) of the Act.¹

¹ Section 10 (1) reads as follows:

"Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection

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Simultaneously with the filing of the § 10 (1) petition against the union, the Board filed suit in the same District Court, asking that petitioner be enjoined from enforcing the state court injunction. The District Court concluded that the conduct of the union, in the respects stated, was subject to the exclusive jurisdiction of the Board and that the action of the state court invaded the exclusive jurisdiction of the Board and the District Court. It accordingly granted the relief prayed for. The Court of Appeals affirmed. 204 F. 2d 848. The case is here on a petition for a writ of certiorari limited to the following question:

"In view of the fact that exclusive jurisdiction over the subject matter was in the National Labor Relations Board (*Garner v. Teamsters Union*, 346 U. S. 485), could the Federal District Court, on application of the Board, enjoin Petitioners from enforcing an injunction already obtained from the State Court?" 346 U. S. 936.

I. The District Court had jurisdiction of the subject matter, because this is a "civil action or proceeding" arising under an Act of Congress "regulating commerce." 28 U. S. C. § 1337. The National Labor Relations Act is a law "regulating commerce" (*Labor Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1); and here, as in *American Federation of Labor v. Watson*, 327 U. S. 582, 591, the rights asserted arise under that law.

district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D)."